THE COMPLEATE COPY-HOLDER

Wherein is contained a Learned discourse of the Antiquity and Nature of *Manors* and *COPY-HOLDS*.

With all things thereto Incident;

As { *Presentments.* / *Admittances.* / *Surrenders.* / *Forfeitures.* / *Customes. &c.* }

Necessary, both for the *Lord* and *Tenant*. Together; with the forme of keeping a *Copy-hold Court*, and *Court-Baron*.

By Sir *Edward Cooke*, KNIGHT.

LONDON,
Printed for *Matthew Walbanck*, and *Richard*

To the Reader.

THis Copie comming to my hands, perused, and Reverenced by men Learned in the Lawes, I thought most worthy of Publication. The very name of the Composer, who hath beene an Ornament to our Kingdome, is enough to give it sufficient authoritie, and indeere it to every wise opinion. But the profit which doth attend, is most considerable, it being

ing a ſubject ſo materiall, declaring the Antiquitie of Manors *and* Copiholds; *and written for the good of* Lords *and* Tenants, *and by conſequence of all men: it cannot but receive a becomming entertainment. In the confidence of this truth, I referre it to all iudicious peruſall, not a little congratulating my owne happineſſe, to haue beene an inſtrument of bringing ſo excellent a piece from obſcuritie, for the benefit of the Common-wealth.*

W. C.

MANORS AND COPY-HOLDS.

SECTION I.

THough a Manor and Copy-hold have ſuch mutuall reſpect, and reciprocall reference one to the other, as that they are almoſt in nature of Relatives; yet the knowledge of the one cannot be attained unto, unleſſe the ſenſe of the other be truly apprehended: for a Manor is as the body, and copyholds certaine members of this body. In this Treatiſe I will diſcourſe of them ſeverally, and begin with the Manor it ſelfe

ſelfe eſpecially, when common reaſon teacheth us, that *totum magis illuſtrat partes, quam partes aliquæ illuſtrant totum.*

SEC. II.

THE *Saxons* (who held *England* in ſubjection immediately before the comming of the *Normans*) were unacquainted with theſe Manors, yet in effect they had Manors in thoſe daies in circumſtance, peradventure ſomething varying in ſubſtance, ſurely nothing differing from our manors at this day: they wanted neither demeſnes nor ſervices, the two materiall cauſes of a Manor, as *Fulbeck* termeth them: their demeſnes they termed Inlands, becauſe the Lords kept them in their owne hands, and enjoyed them in their own poſſeſſion; their ſervices they termed Utlands, becauſe thoſe Lands were in the manurance and occupation of certaine Tenants, who in conſideration of the profits ariſing out of theſe lands, were bound to performe unto their Lords, certaine duties and ſervi-

Fulbeck in his fourth Decalogue.

ces:

ces: their demeſnes were of two ſorts: & their ſervices likewiſe were of two ſorts.

Sec. III.

ONE ſort of their Demeſnes was termed Bockland, becauſe they paſſed by booke, and they in effect differed nothing from our Freehold lands at this day.

Sec. IV.

THE other ſort of their Demeſnes was termed Folklands, becauſe they paſſed by Polls, and were claimed and challenged by the Tenants; not by any aſſurance in writings, but only by the mouth of the people, *Per vocem populi*; and they in effect differed in nothing from Copyhold Lands at this day.

Sec. V.

TOuching their Services, one ſort of their Services were *Servitia li-*

bera, which consisted most commonly in Render, as to pay yearely such a Rent; or in User, as where the Lord reserved Common for his Cattell, or in *Prender*, as where the Lord reserved three shillings, and foure loads of Estovers for fuell to be taken yearely in his Tenants grounds.

Sec. VI.

THE other sort of Services, were *Servitia villana*, which consisted altogether in Feasance, as to scoure the Lords ditches, to tile his houses, to thatch his barnes, or such like.

Sec. VII

AND in the reservation of these Services, the Lords had a speciall respect unto the quality of the Land: Did they transferre their Bocklands, *hoc est*, Free-hold Lands, they would never reserve Villeine Services; did they

they transferre their Folk-Lands, *hoc est*, Copyhold Lands, they would never reserve free Services, but still they suited their Services according to the nature of the Land. The reason I gather was this, in those dayes none but men of good account and reckoning enjoyed the said Bock-lands, whereas Holblands were in the hands of men of meaner sort & condition: and therfore had not the Lords care been extraordinary in reserving apt Service, they should have much wronged their Tenants; and thus much *Lambert* verifieth, saying, *Terra ex scripto fuit hereditaria, libera, atque immunis: terra verò sine scripto officiorum quadam servitute fuit obligata: priorem plerumque nobiles atque ingenui, posteriorem verò rustici feri & Pagani possidebant.* *Lambert* termeth these Bocklands, *Terras liberas atque immunes, non quod ab omnibus servitiis fuerunt liberæ aut immunes, sed quod tenentes ipsi fuerunt liberi & servitiis tantum liberis onerati.* But I much wonder, why this Bockland doth to this day retaine the name of Freehold land, sithence time hath bred such an alteration, that in the point of Service,

Lamb. in his explication of the *Saxon* word *Terra exscripta.*

a man can ſcarce diſcerne any difference betweene Freehold Lands and Copyhold Lands. The favorable hand of time hath ſo infranchiſed theſe Copyholders, that whereas in the *Saxons* time, their Services did conſiſt wholly in Feaſance; now they conſiſt in Render, in Uſer, and in Prender, as Free-holders Services did in thoſe dayes. And on the other ſide, time hath dealt ſo unfavorably with Freeholders, and hath ſo abridged them of their former freedome, that if you compare the Service of the Freeholders with the Service of the Copyholders, *Sentiet hunc potius quàm illum ſore liberum.* How many Freeholders are there at this day, charged with baſe Services? as many I doubt not, as there are Copyholders. No marvell then that many able men turne Copyholders, and many Peazants turn Freeholders; no marvell, I ſay, that men of all ſorts and conditions, promiſcuouſly, both Freeholders and Copyholders, ſithence there is ſuch ſmall reſpect had unto the quality of the Land in the reſervation of our Services. Yet obſerve, I pray, though time

hath

hath ſo infranchiſed theſe Copyholders, that they have in a manner ſhaken off all villaine Service, yet they retain a badge of their former bondage, for they remaine ſtill ſubject to their Lords will: therefore at this day they are termed Tenants at will: But with Freeholders otherwiſe it is; for they are not in that ſubjection to their Lords: peradventure in this reſpect only Bocklands may be termed Freehold Lands, and Folkland Villaine Lands: and yet time hath dealt very favorably with Copyholders in this point of Will, as well as in the point of Service.

Sec. VIII.

FOR, as I conjecture, in the *Saxons* time; ſure I am, in the *Normans* time, thoſe Copyholders were ſo farre ſubject to the Lords will, that *eorum tenentes tempeſtivè & intempeſtivè pro voluntate Domini poſſent reſumi & revocari*, as *Bracton* and *Fleta* both ſpeake: The Lords upon the leaſt occaſion, ſometimes without any colour of reaſon, onely upon diſcontentment and

Bract. lib. 4. Tr. 3 cap. 9. numb. 5. Fleta lib. 5. cap. 51.

malice; sometimes against upon some sudden fantastick humour, onely to make evident to the world the height of their power and authority, would expell out of house and home their poore Copyholders; leaving them helpelesse and remediless by any course of Law, and driving them to sue by way of petition.

Sec. IX.

But now Copyholders stand upon a sure ground, now they weigh not their Lords displeasure, they shake not at every suddaine blast of winde, they eate, drinke, and sleepe securely, onely having a speciall care of the main-chance (*viz.*) to performe carefully what duties and services soever their Tenure doth exact, & Custome doth require; then let the Lord frown, the copyholder cares not, knowing himselfe safe, and not within any danger: for if the Lords anger grow to expulsion, the Law hath provided severall weapons of remedy; for it is at his election, either to sue a *Subpœna*, or an action of Trespasse against the Lord

Lord. Time hath dealt very favorably with copyholders in divers respects.

Sec. X.

BUT I perceive my selfe rashly running into an inextricable Labyrinth, I will therfore sail no longer in these unkown coasts, but will hasten homewards, I will content my self with this. I know amongst the *Saxons* the essentiall parts of a Manor were known, but whether there then were the same form of Manors which is at this day, that I dare not examine, for feare of being accounted more curious than judicious, and therefore leaving the *Saxons*, I draw somewhat nearer home, and come to the *Normans*, from whom we had the very form of Manors which is observed amongst us at this present houre.

Sec. XI.

I Confesse indeed, that sithence the Originall creation of Manors, time hath

hath brought in some innovations and alterations, as in giving a large freedome unto Copyholders, both in the nature of their service, and in the manner of their Tenure. Yet I may boldly say, that the self-same form of Manors remain unaltered in substance, though something altered in circumstance. Demesne termed in Latine *Demanium Domanium* or *Dominicum*, is taken in a double sense, *proprie & improprie*. *Proprie*, for that Land which is in the Kings owne hands; and the *Chopinus* saith, that *Domanium est illud quod consecratum unitum, & incorporatum est regiæ Coronæ*, take *Domanium* in this sense, and then you exclude all common persons from being seised in *Dominico*: for admit the King passe over the Demesne Lands, as soone as they come into a common persons hands, *desinunt esse terræ Dominicales*; for though the Kings Pattentee hath the land granted to him, and to his Heires, yet comming from the King must necessarily be holden of the King, it is contrary to the nature of Demesne Lands to be holden of any, therefore though those lands which are commonly termed

Chophimus de Domanio fronte lib. 2.

med ancient Demeſne, *viz.* ſuch lands as were *quond.* in the hands of *Ed. the confeſſ.* may properly be termed generally anciẽt Demeſn, becauſe they were in ancient time in the Kings own poſſeſſion, yet to terme them at this day the Lords Demeſnes, or the Tenants Demeſnes being ſevered from the Crown is improper *ca. qua ſuper.*

Sec. XII.

THen by this it appeareth that thoſe lands are termed, *impropriè*, Demeſne, which are in the hands of an inferiour Lord or Tenant, nor can ſuch a one in propriety of ſpeech bee ſaid to ſtand ſeiſed of any Land whatſoever *in Dominico ſuo*, but if you obſerve narrowly the manner of pleadings, the words are uſed in a proper ſenſe, for you ſhall never finde that an inferiour Lord or Tenant, will plead that he is ſimply ſeized *in Dominico*, but ſtill with this addition, *in Dominico ſuo ut de feodo*, and that very aptly, for this word Fee implieth thus much, that his eſtate is not abſolute, but

but depending upon some superiour Lord: therefore I conclude with the *Feudists*, that a common person may aptly be said to stand seised in *Feodo*, or in *Dominico suo ut de feod.* but improperly in *Dominico* simply; the King *è converso* may properly bee said to stand seised *Dominico* simply, but in *Feodo* improperly, or in *Dominico suo ut de feodo*. *Bracton* divideth these Demesne Lands into two branches; under the first are comprehended those Lands which the Lord injoyeth in his own possession; under the second, those Lands which are in the hands of the inferior Copyholders; His words are these, *Dominicum dicitur quod quis habet ad mensam suam & idcirco Anglice vocat. Bordland; dicitur etiam Dominicum villinagium quod traditur villanis, quod quis tempestive & intempestive resumere possit, pro voluntate sua & revocare.*

Bract. lib. 4. tract. 3. cap. 9. numb. 5.

Sec. XIII.

Fleta agreeth with *Bracton* in this division, and unto these two he addes more sorts of Demesne Lands: His

His words are these; *Dominicum est multiplex; est autem Dominicum propria terra ad mensam assignata & villenagium, quod traditur villanis ad excolendum, quæ tempestive, & intempestive pro voluntate Domini, & poterit revocari, sicut est de terra commissa tenendum quam diu commissori placuerit: poterit & dici dominicum de quo quis habet liberum tenementum aliter curam de custode dici poterit & curatore quorum unus dicitur ab homine, alius in jure, Dominicum etiam dicitur ad differentiam ejus quod tenetur in servitio. Dominicum denique est omne illud tenementum de quo antecessor obiit seisitus, nec refert, cum usu fructu vel sine, & de quo si ejectus esset recuperare possit per assisam novæ desaisinæ licet alius haberet usum fructum, sicut dici poterit de illis qui tenent in villenagio, qui utuntur & fruuntur non nomine proprio sed nomine domini sui.* Fleta lib. 5. ca. 5.

SECT. XIV.

THis opinion of *Bracton* and *Fleta*, both consenting in one, that Copyhold Land is parcell of the Lords demesnes

demeſnes, wanteth not modern authority to ſecond it, for 15. *Eliz.* In the *Exchequ.* I finde it adjudged in the caſe of a common perſon, howſoever it is otherwiſe in the Kings caſe; That if the Lord of a Manor graceth away *omnes terras ſuas dominicales*; the Copyholds partell of Manors paſſe by theſe general words, neither doth this want Reaſon to confirme it; for in the time of *Henry* the 3. and E. 2. when *Bract.* and *Fleta* lived, Copyholders were accompted meer Tenants at will, and therefore after a ſort their Lands reputed to continue ſtill in the Lords hands and now, though cuſtome hath afforded them a ſurer foundation to build upon, yet the Franck Tenement at the common law, reſting in the Lord, it can be no ſtrange thing to place their lands under the ranke of the Lords demeſnes. But to deliver my minde more freely in this point, I thinke that howſoever, according to the ſtrict rules of Law, theſe Copyholders are parcell of Lands demeſnes, yet in propriety of ſpeech (if propriety can be in impropriety) they are more aptly called the Copyholders

demeſnes

demeſnes; for though the Frank tenement be in the Lord by the common Law, yet by the cuſtome the inheritance abideth in the Copyholders; and it is not denied, if a Copyholder be impleaded in making title to his Copyhold, he may juſtly plead, *quod eſt ſeiſitus Dominico ſuo*, with this addition, *ſecundum conſuetudinem Manerii*. Therefore I conclude, that howſoever the common Law valueth the title of the Copyholder, yet he hath ſuch an intereſt confirmed unto him by Cuſtome, that the Lord having no power to reſume his Lands at his own pleaſure, they are (though improperly) called (yet peradventure truly accounted) the Lords demeſnes, and that in the eye of the world, howſoever it be in the eye of the Law, that theſe Lands alone can properly challenge the name of the Lords demeſnes (if any Lands in the poſſeſſion of inferior Lords, may properly challenge that name) which the Lord reſerveth in his own hands, for the maintenance of his owne Boord or Table; be it his waſte ground, his arable ground, his paſture ground, or his medow; be it his Copyhold

pyhold which he hath by eſcheat, by forfeiture, or by purchaſe, or be it any part of his Freehold-Land, of which I muſt ſpeake a word by the way, not to prove that it is demeſne, for, *manifeſta probatione non indigentes*, but to ſhew you in what ſenſe it is taken, and how farre it extendeth.

SEC. XV.

A Freehold is taken in a double ſenſe; either 'tis named a Freehold in reſpect of the ſtate of the land, or in reſpect of the ſtate of the Law.

SEC. XVI.

IN reſpect of the ſtate of the Land, ſo Copyholders may be Freeholders, for any that hath any eſtate for his life, or any greater eſtate in any Land whatſoever, may in this ſenſe be termed a Freeholder.

SEC. XVII.

IN reſpect of the ſtate of the Law, and ſo it is oppoſed to Copyholders

ers, that what Land ſoever is not Copyhold, is Freehold: and in this ſenſe I take throughout this Diſcourſe.

Sec. XVIII.

THE name of Freeholders extendeth not only unto Lands held *per ſervitium militare*, as it did by the ancient lawes of *Scots*, amongſt whom Freeholders were knowne by the name of *milites*: but it reacheth likewiſe to Lands holden *per ſervitū Socæ*, whether in *libero Socagio*, or in *villano Socagio*. *Liberum Socagium* is, where any Tenant holds of any Lord by paying yearely a certain ſumme of money in *lieu* of tillage, and ſuch like ſervices, and not by eſcuage; and this is termed ſometimes, common Socage.

Socagium villanum is where the ancient ſervices of carrying the Lords dung into the fields, of plowing his ground at certaine dayes, of plaſhing his hedges; and ſuch are not turned into money, but remaine ſtill unaltered;

and if you doubt that ſuch Land as is held *per villanum Socagium*, cannot come within the compaſſe of Freehold Land: for your ſatisfaction, read *Bracton, lib. 2, cap. 8. num. 8. Hactenus de primo defunctionis membro; ad ſecundum properemus, & pauca de ſervitiis Domino debitis pertractemus.*

Services in *individuo* are manifold, in *ſpecie* threefold. 1. Corporall ſervices. 2. Annuall ſervices. 3. Accidentall ſervices.

Corporal ſervices are of two ſorts; ſervices of Submiſſion, ſervices of Profit.

Sec. XIX.

SErvices of Submiſſion are Homage and Fealty, which are certaine ceremonies uſed among tenants, whereby they ſubmit themſelves unto their Lords, and binde themſelves by ſolemn oath, or by faithfull promiſe, from that day forward to become the Lords men for life, for member, for terrene honour, or *ad minimum*, to owe unto him faith, for the Lands which they hold of him. Both theſe Cere-

Ceremonies are uſed at the firſt entrance or admittance of any Tenant; and both tend to one end, *viz.* to inforce every Tenant to acknowledge and confeſſe himſelfe Tenant unto his immediate Lord: Yet they differ in many materiall points.

Sec. XX.

IN Regard of their ſeverall manner of performance: For, in doing fealty the Tenant taketh a ſolemn oath; in doing homage only giveth his faithfull promiſe: and thence it is, that fealty is accounted the more ſacred ſervice, though homage be the more humble ſervice, and performed with farre greater reverence than fealty in many reſpects: For in doing homage, the Tenant kneeleth; in doing fealty he ſtandeth: in doing homage, the Tenant muſt remaine uncovered; in doing fealty, he may remaine covered; in doing homage, the Lord kiſſeth his Tenant; in doing fealty, he kiſſeth him not. Laſtly, in doing homage, the Tenant promiſeth to become the Lords man for life, for member, and terrene

honor; in doing fealty he only sweareth to become the Lords faithfull Tenant: the reason of this difference I learn to be this; because homage especially concerneth service in warre, and properly appertaineth unto Knights service, but fealty chiefly concerneth service at home, and properly appertaineth to Socage tenure; and though now 'tis held, that a Tenant by Socage may doe homage, and that homage *ex se* maketh Socage Tenure, and not Knights service; yet originally homage was invented for Tenants by Knights service, and such as were bound by their tenure to attend their Lords in the warres; but fealty was primarily devised for Tenants in Socage, and such as were bound by their tenure to manure the Lords ground, and carefully to discharge all rurall affaires: And this agreeth with the ancient Lawes in *Scotland*, for among them none were accounted Freeholders but only Tenants by Knights service; and consequently, none but they could doe homage: and therefore marvell not why in doing Homage, the Tenant promised

to become the Lords man for life, for member, for terrene honor, in doing fealty he only ſweareth to become the Lords faithfull Tenant.

2. They differ in regard of the perſons to whom they are performed and that two wayes. 1. In reſpect none is capable of receiving homage, but the Lord in perſon: But the Lords Steward, or his Bayliffe is capable to receive fealty in the Lords behalfe. 2. In reſpect that a Lords who hath but an eſtate for his life in his Seigniory cannot receive homage, but ſuch a Lord may receive fealty.

3 They differ in regard of the perſons to whom they are performed, and that two waies. 1. In reſpect that no Copyholder is capable of doing homage, but he is of doing fealty, witneſſe common experience. 2. In reſpect that a Tenant for life or yeers, is unable to doe homage, for tis a ground in law, that none can doe homage but Tenant in feeſimple, or *ad minimum* Tenant in tayle.

Sec. XXI.

Brudnal and *Yoxley* 5. *H.*7. The Justices of the Common Place, 10 *H.*6. held, that Lessee for yeers cannot doe fealty.

BUT Tenants for life or yeers, are both able to doe fealty, according to *Littletons* rule, that fealties are incident to every tenure, except tenures in Franck-almoigne, and Tenants at will, contrary to some erronious opinions: they differ in regard that homage can be but once done unto one Lord by the same Tenant; and therefore 'tis agreed, that if Land discend unto me, which is holden of *I. S.* by homage, and I doe unto him homage, and after other Land discendeth unto me by another Ancestor, which is holden of the same Lord by homage, I shall not doe homage againe, but fealty only, because I cannot twice become the Lords man; but the selfe-same Tenant may severall times doe fealty unto the self-same Lord; and therefore if a Copyholder surrendreth White-acre unto me, for his White-acre I should doe fealty unto the Lord. If after another surrendreth unto me Black-acre, I shall doe fealty likewise unto the same Lord.

Lord. And thus much for services of Submission.

Sec. XXII.

SErvices of Profits are of two sorts; tending to the publique profit of the Common weale; as when the Lord injoyneth his Tenant to amend high waies, to repaire decayed bridges, or *similia*. 2. Tending to the private profit of the Lord; as where the Tenant is injoyned to be the Lords Carver, Butler, or Brewer, or is tied to pail the Lords Parks, to tyle the Lords houses, to thatch the Lords Barns, and *similia*. And thus much for corporall services.

Annuall services are in number infinite, in nature all one, for they all tend to the increase of the Lords Coffers, and are reserved in their duties, as well for Copyhold land, as freehold land; though in the *Saxons* time, and long after the Conquest, they were never, or seldome reserved for Copyhold land, but only for freehold land. I will not enumerate many particulars of annuall services, for that were

as endleſſe, as numbring the ſands of the Sea; only this I ſay, that thoſe annuall ſervices which here come within the compaſſe of my meaning, conſiſt in Render, none in Feaſance, for thoſe annuall ſervices, as well as accidentall ſervices, which conſiſt in Feaſance, I comprehend under corporall ſervices; thus leaving both corporall ſervices and annuall, I bend my courſe towards accidentall ſervices, which before I begin to particularize, obſerve theſe two things by the way:

1 That accidentall ſervices differ from corporall and annuall ſervices in this; that moſt accidentall ſervices are incident to the fee, & are due without ſpeciall reſervation of the Lord; but moſt corporall ſervices, and all annuall ſervices are due upon ſpeciall reſervation, and are not incident unto the Fee.

2 That ſervice is taken in a double ſenſe, in *ſtrictiori ſenſu*, and in *latiori ſenſu*; In *ſtrictiori ſenſu*, and in that ſenſe the *Feudiſts* define, *ſervitium fore munus obſequii clientelario*, &c. that duty which the Tenant oweth unto his

his Lord, either in performing ſome corporall function, or in diſcharging ſome annuall payment. In *latiori ſenſu*, and ſo it ſignifieth any duty whatſoever accruing unto the Lord, by reaſon of his Seigniorie; and in this ſenſe, accidentall ſervices following which *prima facie*, may ſeem better to ranke under the title of juſdictions, or rather under the name of the fruits of a Manor) may very fitly be reduced to theſe kinde of ſervices.

The ſervices I ayme at, and which I mean to treat of particularly in this place are theſe following;

1 *Wardſhips.*
2 *Herriots.*
3 *Reliefes.*
4 *Amerciaments.*
5 *Forfeitures.*
6 *Eſcheates.*

Now touching every one of theſe apart, and firſt with *Wardſhips.*

Sec. XXIII.

WArſhipp. eſt cuſtodia heredis infra aetatem exiſtentis. Polidore Virgil

Virgil saith, that this was *novi vectigalis genus excogitatum*, to helpe. *Hen.* 3. being oppressed with much poverty, by reason he received the Kingdome greatly wasted by warres of his Ancestors, and therefore needing extraordinary helpe to uphold his estate, the use of Wardships was set abroach. But the 33. Chapter of the grand Customary maketh mention of this to have been used among the *Normans*, immediatly after the erection of Manors, and that the use of Wardships was on foot before *H.* the thirds time, as appeareth manifestly by *Glanvill*, who writeth very largely in many places in his Book, and lived in *H.* the seconds time, Guardians are either termed *Custodes*, or *Curatores*: *Custodes à lege*, *Curatores ab homine*, as *Fleta* speaketh. The Civillians make three sorts of *Guardians*, 1. *Tutor testamentarius.* 2. *Tutor à Prætore datus.* 3. *Tutor legitimus.* This in every point agreeth with our Common Law, so we have *Tutorem testamentarium*, *viz.* where a man possessed of certain goods and chattels demiseth these unto his childe and withall, committeth the care of his

Fleta lib. 5. *c.* 5.

his childes body, and diſpoſition of his ſubſtance unto ſome friend, this commitee is *Tutor teſtamentarius*, unto whom belongeth the care and cuſtody of the childes body, and the diſpoſition of his ſubſtance, untill he accompliſh the full age of fourteen yeers and then immediatly he ſhall be out of Ward for his body, but his goods may be kept longer, for as for them they ſhall remain in the truſtees hands ſo many yeers as the Teſtator appointed by his laſt Will and Teſtament: for though it be not in the Fathers power to reſtrain the liberty of his childes body longer then to the age of 14. yet the diſpoſing of his goods he may commit to any, for as long time as himſelfe ſhall thinke expedient: So by the Stat. 32. and 34 *H.* 8. If a man be ſeiſed of Socage Lands, not holden of the King in Capite, he may by his laſt Will and Teſtament commit the ordering of Theoglands, to what friend ſoever, for as many years as ſhall ſeem moſt convenient, and that friend is *Tutor Teſtamentarius*: otherwiſe it is of lands holden by Kinghts ſervice; for it is not in any mans

Power by his laſt Will and Teſtament, to deprive the Lord of that duty which, *de jure*, belongeth to him, and therefore if a Copyholder dieth, his Heire under under the age of fourteen (in regard that this priviledge of appointing the heires a Guardian for their Copyholde land) untill he accompliſh the age of fourteen, *de jure*, appertaineth unto the Lord. It ſeemeth that the Father cannot prejudice the Lord in this kinde, by appointing him another Guardian by his laſt Will and Teſtament; *hæc de Tutore teſtamentario.* 2. We have *Tutorem à Prætore datum, viz.* where a man deviſeth goods unto his childe, & appointeth him not a Guardian, then it is in the Ordinaries hand to commit the ordering of the Infants goods unto ſome truſty friend, unto the age of fourteen; at what time the Infant himſelf may chooſe a Guardian: for it is a rule in the Civill Law, *Invito curator non datur*, and this Commitee *eſt Tutor à Prætore datus.* Theſe Guardians termed amongſt the Civilians, *Tutores à Prætore dati*, are commonly called Guardians, *pur nurture*; and thus

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in words we somewhat differ, in matter nothing. 3. We have *Tutorem legitimum, viz.* where the interest doth *de jure* belong unto any, without the nomination of a private person, or the appointment of any publique Officer: and this Guardian is two fold, either *legitimus jure naturæ*, or *legitimus jure Communi*: *Legitimus jure Naturæ*; as where the Father or the Mother hath the Wardship of their heires apparent, be it heire male or female: *Legitimus jure Communi*; and that Guardian is twofold, either Guardian in Chivalry, or Guardian in Soccage; Guardian in Chivalry is where any Tenant seized of land, holden by Knights service dieth, his heire male under the age of fourteen, and unmarried; then shall the Lord have the Ward, both of the lands, and body of this heire male, unto the age of 21. because the law intendeth, that before that age, the heire is unable to perform Knights service, according to the tenure; but the heire female shall be in Ward, no longer than to the age of sixteen, because the heire female, though she her self be unable to perform

fourn Knights service, yet at fifteen, she is able to take a husband, who in her behalfe may doe Knights service, and therefore at those years she shall be out of Ward; nay, sometimes she shall be out of Ward before fifteen, and that is either, where she is married at the death of her ancestor, or where she is any whit above fourteen, when her ancestor dyeth; in neither of these Cases shall she be in Ward at all; for though the *Stat. of W. 1. cap.* 11. giveth unto the Lord two years next ensuing the fourteenth, yet that is to be understood, where she is under the age of fourteen, and unmarried at her Ancestors death, and not otherwise. This for Guardian in Chivalry. Guardian in Socrage, is, where any one seized of Soccage lands dyeth, his heire under the age of fourteen, then the next friend unto the heire, to whom the inheritance cannot discend, shall have the Ward of the heires body and of his land, untill the age of fourteen, as if the land discendeth unto the heire by the fathers side; then the mother, or next cosin of the mothers side shall have the Ward; and

if

if the Land discendeth to the heire by the mothers side, then the father, or next cosin on the fathers side shall have the Ward. To conclude, observe this difference betweene Guardian in Chivalry, and Guardian in Soccage, that the one receiveth the commodities of the Land to his owne use, without giving any account; the other onely to the use of the heire, to whom he shall be accountable whensoever it shall please the heire to call him to account, after the age of fourteene. Thus much concerning Wardships; a word concerning Herriots.

SEC. XXIV.

HErriot, or Harsiot commeth of the Latine word *Herus*, *Dominus*, because it is a duty appropriated to the Lord; or it is derived from the *Saxon* word, *here exercitus*, because in the *Saxons* time, when the name of Herriot was first knowne, Herriot signified nothing else but a tribute given to the Lord for his better prepara-

paration towards warre, as a horſe trapped, or a ſpeare, or armour, or a ſword, or ſome ſuch like Military weapon; and therefore in this ſenſe importing a thing appertaining to the warre, and being due unto the Lord, by reaſon of this ſervice, which Tenants ow unto their Lords in many warlike imployments, it may very fitly be derived from hence: This their Herriot among the *Saxons* little differed from our Reliefe at this day, howſoever now they differ *ex diametro*: But let us examine the nature of our Herriots at this day, and not ſearch into the nature of their Herriots in thoſe dayes; for that were to examine the nature of Reliefes, not Herriots. *Britton* thus ſpeaketh; A Herriot is a Render, made at the death of a Tenant to his Lord, of the beſt beaſt found in the poſſeſſion of the Tenant deceaſed, or of ſome other, according to the ordinance and aſſignement of the party deceaſed to the uſe of the Lord, which toucheth not the Land at all, nor the heire, nor his inheritance, neither hath any compariſon to a Reliefe, for it

Vide Lamb. in his explication of *Saxons* words, *tit. Herriot.*

Brit. cap 69.

it proceedeth rather of grace and good will, than of right, and rather from villaines, than freemen: to this effect ſpeaketh *Fleta*, *Herriottum eſt quædam præſtatio, ubi tenens, liber vel ſervus in morte ſua dominum ſuum reſpicit de meliori averio ſuo vel de ſecundo meliori, quæ quidem præſtatio magis fuit de gratia quam de jure, & nullam habet comparationem ad relevium eo quod heredi non continget quia factum anteceſſoris.* *Fleta lib. 4. cap. 18.*

This our Herriot is twofold; Herriot ſervice, Herriot Cuſtome. Herriot Service, is that Herriot which is never due, without ſpeciall reſervation, and is ſeldome reſerved upon any leſſe eſtate, than an eſtate of inheritance. Herriot Cuſtome, is that Herriot which is never due upon ſpeciall reſervation, but is challenged upon ſome particular Cuſtome, and is uſually payd upon an eſtate for life, and for yeeres, as well as upon an eſtate of inheritance. Touching the originall of theſe Herriots, doubtleſſe they are not of that antiquity which the name doth promiſe, for though among the *Saxons*, the name of Herriot was

knowne,

knowne, yet the nature of both these, Herriot Services, and Herriot Custome, was utterly unknowne, untill the comming of the *Normans*; who immediately upon the Conquest, changed the name of the *Saxons* Herriot, and termed it by the name of a Relieſe, leaving notwithſtanding ſome difference betwixt them, for where the *Saxons* Herriot, conſiſted uſually in the payment of ſome military weapon; our Relieſe in thoſe daies conſiſted wholly in the payment of a certaine ſumme of money, and preſently after, the *Normans* had thus wholly altered the name, and ſomewhat altered the nature of the *Saxons* Herriot, then upon the parcelling of their lands unto inferior Tenants, they invented this new kinde of ſervice unknowne amongſt the *Saxons*, and termed it by the name of Herriot Service: afterward, upon the infranchiſement and manumiſſion of certain villaines; theſe Herriot Cuſtomes were given to the Lords, as a continuall, *future gratulation*: ſo that originally, as *Britton*, and *Fleta* well note, they were granted meerely, ex

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gratia, but now time hath effected it: that they are challenged, *ex debito*. Thus much of Herriots; a word of Reliefe.

SEC. XXV.

RElief is a certaine summe of money which every Freehol-der payeth unto his Lord, being at full age at the death of his Ancestor, which in effect foundeth all one, with these words of *Glanvil*, *Hæredes majores statim post decessum antecessorum suorum possunt se tenere in hæreditate sua, licet Domini possint feodum suum cum hærede in manus suas capere: ita tamen moderate id fieri debet, ne aliquam difficultatem hæredibus faciant, possunt enim, hæredes si opus fuerit, violentiæ Dominorum resistere, dum tamen parati sunt Relivium alia vero servitia eis inde facere*; with this agreeth the definition of *Hotoman*, *Relivium est honorarium quod novus vassallus introitus causâ patrono largitur quasi morte usuali altius vel alio quo casu feudi excideris quod jam a nova sublevatur*. This relief by the ancient

Glanv. lib. 7. cap. 9.

Hotoman Comment. de verbo feod & verbo Relivium.

cient Civill Law was termed *Introitus*, and *Vincentius* termeth it *Præstationem seu solutionem factam pro confirmatione seu renovatione possessionis*, and that very aptly: for indeed Reliefe is the key, which opens the gate to give the heire free passage to the possession of his inheritance. *Bracton* giveth this reason why it is called a Reliefe, *Quia hæreditas quæ jacens fuit per antecessoris decessum, Releviatur in manu hæredis & propter factum relevationem faciend. erit ab hærede quædam præstatio quæ dicitur Relevium.* *Skene* fondly imagineth that it taketh his name, *a relevando*, in another sence; for saith he, Reliefe is given by the Tenant or Vassall, being of perfect age, after the expiring of the Wardship, to the Lord, of whom he held his Land by Knights service, it is by Ward and Reliefe, and by payment thereof he relieves, and as it were, raiseth up again his lands after they were fallen downe into his superiors hands, by reason of Wardship. But these words of *Glanvil* will serve to convince him of error; *Tandem vero eodem ad ætatem perveniente, & facta ei hæreditatis resti-*

Bract. lib. 2. cap. 86.

Skene de verbo signum. tit. Reliefe.

Glanvil. lib. 9. cap. 9.

restitutione quietus erit a Relivo ratione custodiæ: This Reliefe is twofold, First, Reliefe Service. Second, Reliefe Custome: Reliefe Service, is that which is paid upon the death of any Free-holder. Reliefe Custome, is that which is paid upon the death, change, or alienation of any Free-hold, according to the Custome of the place, in many places halfe a yeeres profit, in many places a whole yeeres profit, and therefore where *Bracton* saith, *Quod dat Domino Relevium qui succedit jure hæreditatis, non autem is qui acquirit*; that is to be taken with this caution, *nisi illud etiam consuetudine, præstare debet qui acquirit.* These Reliefes are paid, as well for lands holden in Soccage, as lands holden by Knights service: for lands holden in Soccage in this manner; If a Tenant in Soccage die, his heire above the age of fourteene, then shall the heire double the Rent that his Ancestors was wont to pay to the Lord, as if the Tenant holdeth of his Lord by fealty, and five shillings; then shall the heire double the Rent, and shall pay ten shillings, *viz.* five shillings in the name of a Reliefe, over and above the

five ſhillings, which he payeth for his Rent. For lands holden by Knights ſervice in this manner, if a Tenant by Knights ſervice dieth, his heire of full 21. if he holdeth by an intire Knights Fee, he payeth five pound, if by halfe a Knights Fee, then he payeth fifty ſhillings, if by a quarter of a Knights Fee, he payeth twenty five ſhillings, and ſo proportionably, who ſo holdeth more, payeth more, and who holdeth leſſe, payeth leſſe; yet for the fuller apprehenſion of the quantity of a Reliefe: let us examine what a Knights Fee ſignifieth. A Knights Fee, is ſo much land as in ancient time was accounted a ſufficient living for a Knight, but whether this was rated according to the quantitie, or according to the value, *Cauſidici certant, & adhuc ſub judice lis eſt.* Some hold according to the quantity, and that according to the ſeverall computations uſed in ſeverall places. A Knights Fee was either more or leſſe: as in the Dutchie of *Lancaſter*: a Knights Fee contained foure hydes of land, every hyde four carnes of land, every carne foure yard lands, every yard thirty acres; and every Knights fee 1920.

acres.

acres. According to other computations, a Knights Fee contained, 680. But according to moſt computations, a Knights Fee contained five hides of land, every hide foure yard lands, every yard land 24. acres, according to which computation, a Knights Fee contained 480. acres: ſo that according to ſeverall computations, a Knights Fee was more or leſſe. Others hold, that a Knights Fee was meaſured according to the quality, not according to the quantity; according to the value, not according to the content: and amongſt theſe, ſome hold that land to the value of fifteen pound *per annum* made a Knights Fee; and therefore, *Camden* ſaith, that, *Sub Henrico tertio quodammodo coacti fuerunt quites fieri quotquot libras quindecem annuis terrarum redditibus colligant*; and out of *Matthew Paris*, he writeth, that *anno*, 1256. *Exit edictum regium preceptumque eſt & acclamatū per totum regnum ut qui haberet 16. libratas terræ & ſupradict. armis redimitus tirocinio donaretur, ut Anglia, ſicut Italia militia roboraretur, & qui nollent, vel qui non poſſunt honorem ſtatus militaris ſuſtinere*

Camden in ſuo Britan. pag.

ſtinere pecunia ſe redimerent. others hold that *cenſus equeſtris*, was forty pound revennue in Freehold land: and of this opinion is Sir *Thomas Smith*: others held, that *cenſus equeſtris*, was twenty pound revennue; and this opinion is confirmed by many authorities, and reaſons cited in *Anth. Lowes* Caſe, by an ancient Treatiſe, *de modo tenendi Parliamentum tempore Regis Edwardi filii Ethelfred*, where it appeareth, *quod comitatus conſtabat ex viginti feodis unius militis quolibet feodo computato ad viginti libratas. Baronia conſtabat ex 13. in feodis ac tertia parte unius feodi militis ſecundum computationem predicta unum feodum militis conſtabat ex terris ad valentiam 20. li.* and therefore where the Statute of *Ed. 2. de militibus*, provideth that a Knights living ſhall be meaſured by the value of twenty pound *per annum*; this is but an affirmance of the Common law. 2. This is ſtrengthened by the words of the Stat. of *W. 1. cap.* and by *Fitch.* this ſeemeth ſomething pregnant, for in both theſe places; Soccage land to the value of 20. pound *per annũ*, are put in equipage with a Knights Fee. 3. In a

Smith. de rep. pag. 31, 32, 33.

Fitch. nat. Brevium fo. 62.

Writ

Writ of meſne, brought *per Ranulphum de Normanvile petentem verſus Luciam de Kyme tenentem P. 3. E. 1.* appeareth that twelve carnes of Land made a Knights Fee, every carne being in ancient time of the value of five nobles *per annum*; according to which account, a Knights Fee amounted to twenty pound *per annum*. Theſe are the ſeverall opinions, touching the quantity of a Knights Fee, imbrace of theſe, which ſhall ſeem moſt conſonant to reaſon. For my own part, I think that in the ancient time, a Knights Fee, was meaſured according to the number of the acres; but in theſe dayes, according to the value of the land: the reaſon of this alteration is; that though in ancient time, as well as in theſe dayes, ſome lands were farre more fruitfull than others; yet the value of every quantity of land was certainly rated, according to the Cuſtome of the places, & never upon any occaſion was the land increaſed or decreaſed; and therefore were they to examine whether any man had a ſufficient living for a Knight, they would look no fur-

ther than to the quantity of his land; for by the quantity, they could presently judge the value; but now the value is not certainly rated in any place, but increaseth and decreaseth upon every occasion; and therefore reason requireth, that in these dayes a Knights Fee should be measured according to the value, not according to the quantity of the Land, for by reason of the different value of the land, one man may be better able to maintaine the dignity of a Knight, with two hundred acres in some place, and of some land, than another with foure hundred acres of other land. But howsoever it is, whether a Knights Fee be rated according to the value, or according to the quantity let it here rest.

Now give me leave to examine at what time, & by what law it was first provided, that for every Knights Fee the fourth part of a Knights revennue should be paid in the name of Relieſe, *viz.* 5. *li.* For every Barons Fee, the fourth part of a Barons revennue, *viz.* one hundred marks; For every Earles Fee, the fourth part of an Earles Re-

venue,

venue, viz. one hundred pound; surely Reliefes were paid in this manner, before the *Statute* of *Magna Charta*, and that is somwhat pregnant by this, that by the very words of that *Statute*. This Relief is termed *Antiquum Relevium*; and by *Glanvil*, who writ before the making of this Statute, this is somewhat manifest; for he speaketh to this effect, *Dicitur rationabile relevium alicujus juxta consuetudinem regni de feodo unius militis centum solidos de Soccagio verò quantum valet, censum illius Soccagii per annum de Baronia verò nihil certum statutum est quia juxta voluntatem & misericordiam Domini Regis solent Baroniæ capitat. de relevio suis Domino Regi satisfacere*: from whence I gather, that Statute of *Magna Charta*, was in part an affirmance of the Common law, in part an institution of a new Law. *Glanvil. lib. 9. cap. 9.*

Touching Relief paid by Knights, it was but an affirmance of the Common Law, because they were certain before the Statute. Touching Reliefes paid by Barons, it was an institution of a new law, because they were before uncertaine; and the rea-

ſons why Dukes and Vicounts are not mentioned in this Statute, as well as Earles, Barons, and Knights, is this, becauſe when that Statute was made, there was neither Duke, Marqueſſe or Vicount in *England*. The firſt Duke that ever was in *England* ſithence the Conqueſt, was the Black Prince, eldeſt ſonne to *Ed.* the third. The firſt Marqueſſe that ever was in *England*, was *Robert* Earle of *Oxford*, created by *R.* 2. And the firſt Vicount that ever was in *England*, *Dominus de Bello monte*, created by *H.* 6.

But though at the making of this Statute, theſe dignities were unknown, yet they are comprehended under the equity of the Statute, and according to their ſeverall dignities ſhall pay Reliefe unto the King, a Duke two hundred *li.* a Marqueſſe two hundred marks, and ſo ratably and proportionably. But to conclude let us compare Herriots and Reliefes together, and obſerve in what they differ.

1 They differ in this, that an Herriot lyeth in Prender, and a Reliefe in Render. 2. In this, that a Herriot is paid

paid in the name of a Tenant deceaſed; but a Reliefe in the name of an heire, who is become Tenant. 3. In this, that Herriots are paid by Copyholders, as well as Freeholders; but Reliefe by Freeholders only. 4. In this, that Herriots are ever due upon a ſpeciall reſervation, or upon ſome particular Cuſtome; but Reliefes are incident to the Fee, and are due without reſervation or Cuſtome, contrary to the opinion of *Vincentinus*, who holdeth a Reliefe *extrinſecam fore præſtationem & non ineſſe feodo*. Thus much touching Reliefes: a word touching Amerciaments.

Sec. XXVI.

A Merciament is a Pecuniarie puniſhment for any offence committed againſt the Lord of any Manor, or (as ſome more at large define it) it is a certain ſumme of money impoſed upon the Tenant by the Steward by oath, and preſentment of the homage; for the breach of any by-law made, either for the profit of the whole kingdome, or for the benefit of the little

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Commonwealth among themselves, or for default of doing suit, or for other misdemeanors, punishable by the same Court, infinite in number and quality; and this word Amerciament taketh his name from being in the Lords mercy, to be punished more or lesse at his will and pleasure, and it differeth from a Fine in divers respects.

1 In that whosoever is fined may lawfully be imprisoned, but whosoever is amerced cannot. 2. In this, that Amerciaments are incident unto Court Barons, as well as unto Court leets, and Fines are never incident to any Court barons, but to Court leets only, or other Courts of Record. 3. That Amerciaments are incident unto every Manor whatsoever; but Fines are incident unto some few Manors only: the reason of this difference is partly grounded upon the former difference; for sithence Amerciaments are incident unto every Court Baron, and Court Barons are incident unto every Manor: *Sequitur ex consequente*, that unto every Manor amerciaments are incident, but *ex adverso*,

Fines

Fines being incident unto Court leets only, and thoſe Court leets being in ſome few Manors only, not in every Manor expreſly *ſequitur*, that Fines are not incident unto every Manor, but unto ſome few Mannors onely: 4. In this, that Amerciaments are afferable *Per pares, per ſacramentum proborum & legalium hominum de viceneto, qui ſecundum modum delicti majori vel minori Amerciamento delinquent. mulctare poſſunt*: but Fines are never afferable in this kinde; for look what Fine ſoever the Court impoſeth upon the delinquent, that bindeth ſufficently, without further afferance. Give me but leave to ask two queſtions, when had this afferance his firſt conception or creation? 2. How may Amerciament in Court leets be diſcerned and diſtinguiſhed from Fines impoſed in the ſame Court, ſince they are both pecuniary puniſhments for offences commited? Touching the firſt queſtion, I think this law of afferance was before the *Statute* of *Magna Charta*; for *Glanvile* thus ſpeaketh of it, *Eſt autem miſericordia domini Regis quæ quis per juramentum legalium hominum*

Glanv. lib. 1. *cap.* 11.

hominum de vicineto catenus amerciandus est ne aliquid de suo honorabili contenen. amittat; and therefore by this appeareth, that this *Stat.* of *Magna Charta*, was but an affirmance of the Common law in this point of afferance. Touching the second question, know that 'tis not in the power of the Court to impose a Fine, or an Amerciament at their election for any offence committed, but still the quality of the punishment must necessarily suit with the quality of the offence, from the severall natures of offences committed, arise the severall names of punishmẽts inflicted. The offences in respect of the place are two fold, and in respect of the persons two fold. 1. In respect of the place, offences cõmited, *extra curiã*, of which the Steward by no cõmon possibility can have cognizance without the presentment of the homage, and therefore the power of presenting them, and imposing punishments for them, belongeth unto the Jurors of the Leet, and not unto the Steward; and these punishments thus imposed are termed Amerciaments. 2. Offences committed

in

in Curia, of which the Steward can take ſufficient notice, without the helping hand of the homage, and therefore the puniſhments of theſe offences belong unto the Steward, not unto the Jurors; and theſe puniſhments thus impoſed are termed Fines. Thus in reſpect of the place, offences are two-fold. In reſpect of the perſon, they are likewiſe two fold: 1 Offences committed by private perſons 2. Offences committed by publike Officers, and Miniſters of the Court, in the adminiſtration of their office. Puniſhments impoſed for offences of the former rank are termed Amerciaments, of the latter Fines, the one afferable *per pares*, the other not; and the reaſon why the Statute of *Magna Charta* in this point of afferance, extendeth not unto any offences committed in Court by private Perſons, or publique Officers: neither unto any offences committed *extra Curiam*, by publique Officers in adminiſtration of their Office, is this, becauſe though the words of the Statute are generally extending unto all offences whatſoever; yet th' intent of the Statute

Co. 8. *Greiſſlegi-Caſe.*

tute makers was not to make the Jurors Afferors *in omnibus delictis mulctandis, sed in iis tantummodo puniendis quorum certam possint habere notitiã, & intelligentiam*, as *Fleta* speaketh: and therefore sithence the Steward hath more certain notice of offences committed *in Curia* by what persons soever then the Jurors have, and can better judge and discerne of the natures and qualities of offences committed, *Extra Curiam* by publike Officers, than Jurors can; therefore surely the intent of this Statute, was to leave the punishment of these offences to the discretion of the Steward, and not the afferance of the homage. Thus much concerning Amerciaments: a word concerning Forfeitures.

Fleta lib. 1. cap. 98.

SEC. XXVII.

FOrfeiture commeth of the *French* word *Forfaict, scelus, quia scelerum & delictorum perpetratio est forisfacturarum causa & origo.* In our Language it signifieth the effect of transgressing, rather than the transgression it selfe, I mean, it signifieth the penalty for the

the offence commited, rather than the act it ſelfe, whereby the offence it ſelfe is perpetrated, and it extendeth both unto lands and unto goods; unto lands, both Copyhold and Freehold.

Touching the cauſes from whence ſpringeth the forfeiture of Copyhold lands, I ſhall have occaſion to ſpeak more liberally in another place, and therefore I will ſilently paſſe them over, ſpeaking ſome few words touching the cauſes from whence Forfeitures of Freehold land ariſe.

The cauſes are many, amongſt the which I have obſerved. 1. That if any Freeholder alieneth his Land in Mortmaine, he forfeiteth his freehold. 2. If a Freeholder ceaſeth for the ſpace of two whole years, to performe ſuch Services, or to pay ſuch Rents, as he is tied unto by his Tenure, and hath nor upon his land ſufficient goods or chattels to be diſtrained, he forfeiteth his Freehold. 3. If any Freeholder infringeth any condition whereunto he is tied, he forfeiteth his freehold.

Touching the cauſes from whence

grow

grow the forfeitures of goods, they are likewiſe in number many, and from the ſeverall cauſes of forfeiting goods, ariſe ſeverall names of goods forfeited. 1. If a Felon ſtealeth goods, and upon purſuit made, waiveth theſe goods, and leaveth them in any part of the Manor; and be not attached upon the freſh ſuit of the owner; then are theſe goods forfeited to the Lord, and are termed waives. 2. If any beaſts are found wandring in any place, and be proclaimed in three market towns adjoyning, and are not claimed by the owner in a year and a day; then are the beaſts forfeited to the Lord, who hath ſuch a liberty, and are termed Eſtrayes. 3. If any ſuffer Shipwrack upon the Seas; and through the violence of the Waves, goods are caſt upon the Shore; and being ſeized by the Bayliffe, are not claimed within a yeer and a day after the ſeiſure; then are theſe goods forfeited to the Lord who hath that Franchize, and are termed Wrecks. 4. If one come to a violent end, without the fault of any reaſonable creature, then immediately that thing which is the cauſe of that

intirely death, becommeth forfeited unto the Lord; and it is termed a Deodand; as this old verse testifieth; *Omnia quæ movent ad mortem sunt Deodanda*: as if a Horse striketh his keeper, and killeth him: or if a man driveth his Cart, and seeking to redresse it, falleth, and the Cart wheele running over him, presseth him to death; or if one felling a tree, giveth warning to commers by to look to themselves, and notwithstanding warning given, some body is slaine by the fall of the tree: the Horse in the first case, the Cart and the Horses in the second case, and the Tree in the third case, are forfeited to the Lord as Deodands: many other sorts of forfeited goods I might adde unto this, but I will forbeare to enumerate any more in this kinde; and to speak more largely of these which I have already enumerated, for three speciall reasons.

1 Because they are duties accruing unto the Lord, not meerly from the Tenants, nor solely by the act of the Tenants, but most commonly from strangers, and by the sole act of strangers,

gers, and therefore I confeſſe are not aptly ranked under the name of Services. 2 Becauſe a perfect Manor may well ſubſiſt, without their aſſiſtance, ſince they adde nothing to the perfection of the eſſence of a Manor. 3 Becauſe they are not incident unto every Manor, but unto ſuch Manors only as can challenge them, either by ſpeciall preſcription, or by Patent from the King; for primarily and originally theſe forfeitures of goods, belonged to the King for theſe reaſons: eſpecially, becauſe what goods ſoever have no certaine owner known to challenge intereſt in them, as waives, eſtrayes, and wrecks, the property of ſuch goods belong unto the King, *virtute prærogativæ*, and thus much *Bracton* intimateth, when he ſaith, *Sunt alia quædam quæ in nullius bonis eſſe dicuntur, ſicut wreccum maris, &c. & aliæ res, quæ Dominum non habent, ſicut animalia vagantia, & quæ ſunt Domini Regis propter privilegium marium*: the reaſons why *Deodands* are forfeited to the King, is this.

Deodands were originally invented

for

for the pacifying of Gods wrath, and the appeasing of Gods anger, and these things thus forfeited, were according to the true intendment of the Law to be sold, and mony distributed among the poor; and therefore upon whom could the law have better confered this benefit, or rather imposed this charge then upon the King, who representeth Gods person upon the earth, and whom the Law presumeth will deale more justly, and truly, nay, more liberally and bountifully with the poore in this kinde, than any inferior Lord, who peradventure out of his uncharitableness, peradventure out of want, will be so farre from adding any thing to that which is due, that he will rather unjustly substract part, or unconscionably detaine the whole.

Since therefore, these Forfeitures of goods neither adde to the perfection of a Manor, neither are incident unto every Manor, to spend any further time about a subject so superfluous would ill beseem this small Treatise, wherein the scope and end I aim at, is this, only to present to your

view what things soever are necessarily requisite to the essence of every Manor, and what Services soever are incident unto every Manor: and thus much concerning Forfeitures; a word concerning Escheats.

Sec. XXVIII.

EScheates commeth of the *French* word, *Echeur*, *excidere*, and are termed *Excadentia*, which imports lands fallen into the Lords hand for want of heire, generall or speciall, to inherit them, but before the Lord enter into an Escheate in this kinde, the homage ought to present it, and being presented proclamation ought to be made to give notice to the world, that if any man come in, and justly claime, he shall be received; the homage then finding it clear, intitles the Lord, as to Lands Escheated.

Besides this ordinary sort of Escheate, there is another sort of Escheate, and that is, where any Freeholder commiteth Felony, and is attainted, the King shall have *annum diem & vastum*; and then it commeth

unto

unto the Lord as an Eſcheate; thus much concerning the nature of Services in generall, and there are ſo many particular Services in *individuo*, that I might inſiſt in millions more, but feare of incurring the cenſure of being over tedious, reſtraineth the forwardneſſe of my hand: yet ſithence occaſion is ſo favourable to me, I will preſume ſo much upon your patience, as to lay open the ſeverall remedies which the Law hath provided for the obtaining of thoſe ſeverall Services before mentioned, if perchance they be wrongfully deceived by the Tenant; and for methods ſake, I will begin with corporall Services.

Sec. XXIX.

IF any Freeholder refuſeth to doe homage, or fealty, which are corporall Services of ſubmiſſion; or to mend high wayes, repaire decayed Bridges; or *ſimilia*, which are corporall Services, tending to the publique profit of the Common weale, or to diſcharge the office of a Carver, a Butler, a Brewer, or ſuch like; or to

paile the Lords Park, to tile the Lords Houſes, or to thatch his Barns; or *ſimilia*, which are corporall Services tending to the private profit of the Lord; If, I ſay, any Freeholder refuſeth to doe any of theſe Services, being bound unto them by his Tenure, then may the Lord lawfully diſtreine his cattle or his goods, and detein them untill ſatisfaction be given, by performing ſuch Services as the Law doth require, and the ſame remedy which the Law hath provided for Corporall Services, is likewiſe provided for Annuall Services.

Sec. XXX.

OR if any Freeholder refuſeth to pay any annuall Rent, or to diſcharge any annuall payment, according to his Tenure; then may the Lord lawfully diſtrein and in a Replevin brought by the Tenant, may avow the diſtreſſe, and juſtifie the taking. But no action of debt will lye for theſe annuall Services, no more than for Corporall Services; for it is a ground in Law, that as long as

the the Rent continueth of any eſtate or Franke tenement, no action of debt lyeth for the arrerages of the Rent, nor for any other Service whatſoever; and therefore if a Leaſe for life be made reſerving rent, the Leſſor cannot maintain an action of debt for the arrerages of this Rent, as long as the eſtate continueth, but preſently upon the determination of the eſtate an action of debt lyeth for the arrerages of the Rent incurred before the time of determination: But what hath the Law provided no other remedy for thoſe annuall Services, than a diſtreſſe? Surely no, before ſeiſein, none, but after ſeiſein once gained, 'tis at his election, either to diſtrein, or to bring an Aſſize: and thus much touching remedies for corporall and annuall Services.

SEC. XXXI.

ACcidentall Services are gotten by many differing meanes; 1. By ſeiſure only, as the Wardſhip of the heires body, together with the Waives,

Estraies, Wrecks, Deodands, and such like forfeitures of goods. 2. By the entry onely, as the Wardship of the heires land, together with lands forfeited to the Lord, either upon the breach of some condition, or upon alienation in Mortmain. 3. By Seisure or Distresse, as Herriot Services, contrary to the opinion of some, who held them gainable by distresse onely, and not by Seisure, or action, as Herriot Customes; for upon the eloignement of the best beast, the Lord may maintain an action of detinue against the heire. 4. By entry, or action, as Lands forfeited to the Lord, by the cesling of his Tenant, or Escheat, accruing unto the Lord, either upon the attaindour or death of his Tenant without heire; in the first, the Lord may enter or maintain a Writ of *Cessavit*; in the second, the Lord may enter or maintain a Writ of *Escheat*. 5. By Distresse or Action, as Reliefes and Amerciaments. For Reliefes the Lord may distrain, or bring an action of debt; neither doth this any whit impugne the former ground, that as long as the rent doth continue, &c. because

indeed

indeed Reliefe is the fruit and approvement of Services rather than any ſervice, and for Amerciaments the Lord may either diſtrain or bring an account of debt: other remedy the Law hath provided againſt ſtrangers, for detaining of theſe duties from the Lord, as to inſiſt in one: if a ſtranger will detaine the Wards body or the Wards land from the right Lord, a Writ *de recto de cuſtodia terræ & hæredis* lyeth againſt the ſtranger; but to meddle with ſtrangers were to wander out of the little Common weale, and therefore to keep my ſelf within my bounds and limits, I will here conclude, touching the two materiall cauſes of a Manor, *viz.* Demeſnes and Services: a word touching the efficient cauſe of a Manor, and then I will end the definition of a Manor.

The efficient cauſe of a Manor is expreſſed in theſe words, Of long continuance, for indeed time is the mother, or rather the nurſe of Manors; time is the ſoule that giveth life unto every Manor, without which a Manor decayeth and dyeth, for 'tis not

the

the two materiall causes of a Manor, but the efficient cause (knitting and uniting together those two materiall causes) that maketh a Manor. Hence it is that the King himself cannot create a perfect Manor at this day, for such things as receive their perfection by the continuance of time, come not within the compasse of a Kings Prerogative, and therefore the King cannot grant Freehold to hold by Copy, neither can the King create any new custome, nor doe any thing that amounteth to the creation of a new custome, and therefore a composition made between the King and his Tenant, where he hath Herriot custome to pay 10. *li.* in Levy thereof every time it falleth, is no binding composition: for this amounteth to the creation of a new custome. *Et hæc omnia & similia sunt temporum non regum seu principum opera*, which fully verifieth the old saying, *Plus valet vulgaris consuetudo quam regalis concessio*, this is the sole cause why the King cannot create a perfect Manor at this day, & this is the chiefe cause why a common person cannot create a perfect Manor,

but

but not the ſole cauſe; for there is this cauſe farther; a perfect Manor cannot ſubſiſt without a perfect tenure, between very Lord and very Tenant: but a Conimon perſon cannot create a perfect tenure, and conſequently cannot create a perfect Manor: before the Statute of *Quia emptores terrarum*, if any Tenant ſeized of Land in Fee-ſimple had infeoffed a ſtranger, he might have reſerved what ſervices he thought fit, or had he reſerved no ſervices, yet the Law would have imployed a perfect tenure between the feoffor and the feoffee, for the feoffee was to hold of the feoffor by the ſame ſervices, that the feoffor held over on his Lord Paramount, but ſince this Statute, If a Tenant ſeiſed of Land in fee, infeoffeth a ſtranger, neither by the expreſſe reſervation of the feoffor, nor by the implyed reſervation of the Law, can there be a perfect tenure created at this day between the feoffor and the feoffee; for the feoffee ſhall hold immediately of the Lord Paramount not of the feoffor, and further; as the King can doe nothing which amounteth to the creation of a new

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cuſtome: ſo a common perſon can doe nothing which amounteth to the creation of a new tenure, and therefore if there be Lord and Tenant by 10ˢ. rent, and the Lord will confirm the eſtate of a Tenant *Tenend.* by a Hawk, a paire of gilt Spurs, a Roſe, or *ſimilia*, this is a void confirmation; otherwiſe had it been if the Lord had confirmed the eſtate of the Tenant *Tenendum per* 5ˢ. that had been a good confirmation, becauſe it tendeth only to the abridgement of an old tenure, and not to the creation of a new, and as it is with a confirmation, ſo it is with a compoſition. Upon the reaſon of this ground, it is, that if the Lord of a Manor purchaſe forrain land lying with out the Precincts and bounds of the Manor he cannot annex this unto the Manor though the Tenants be willing to doe their Services, for this amounteth to the creation of a new tenure, which cannot be effected at this day; And therefore if a man having two Manors, and the Lord would willingly have the Tenants of both theſe Manors to doe their ſuite and ſervice to one Court, this is but

loſt

loſt labour, in the Lord, to practiſe any ſuch union; for notwithſtanding this union they will be ſtill two in Nature, howſoever the Lord covet to make them one in Name, and the one Manor hath no warrant to call the Tenants to the other Manor, but every act done in the one to puniſh the offenders, in the other is traverſable; yet if the Tenants will voluntarily ſubmit themſelves to ſuch an innovation, and the ſame be continued without contradiction, time may make this union perfect, and of two diſtinct Manors in nature, make one in name and uſe: and ſuch Manors peradventure there are thus united by the conſent of the Tenants and continuance of time, but the Lords power of it ſelfe is not ſufficient to make any ſuch union, *cauſa qua ſupra.* But if one Manor holdeth of another, by way of Eſcheat, theſe two manors may be united together, *fortior enim eſt diſpoſitio legis quam hominis.* But in this, that I exclude common perſons from being able to create a tenure, I may ſeem to impugn many authorities which hold at this day, that a tenure may be created

ted by a common person; for to clear this colour of contradiction know that tenures are two fold. First, imperfect, as where a man maketh a Lease for years or for life, or a gift in taile, here is an imperfect tenure between the Lessor and the Lessee, the Donor and the Donee; and this imperfect tenure I confesse may be created by a common person at this day. Secondly, perfect, between very Lord and very Tenant in fee, and such a tenure a common person could never create since the Stat. of *Quia Emptores terrarum*, and consequently a common person cannot create a perfect Manor fithence; for without a perfect tenure, a perfect Manor cannot subsist. Thus much touching the definition of a Manor, thus much I say touching the two materiall causes, together with the efficient cause. A word of another cause of a Manor which appeareth not in the definition so manifestly as the other causes doe, this is a cause which among the Logicians is termed, *Causa sine qua non*, and that is a Court Baron; for indeede that is the chiefe prop and Pillar

Pillar of a Manor, which no ſooner faileth, but the Manor falleth to ground: if we labour to ſearch out the antiquity of theſe Court Barons, we ſhall finde them as ancient as Manors themſelves. For when the ancient Kings of this Realme, who had all the lands of *England* in *Demeſne* did conferre great quantities of land upon ſome great perſonages, with liberrie to parcell the land out to other inferior Tenants, reſerving ſuch duties and Services as they thought convenient, and to keepe Courts where they might redreſſe miſdemeanors within their Precincts; puniſh offences committed by their Tenants, and decide and debate controverſies ariſing within their juriſdiction; and their Courts were termed Court Barons, becauſe in ancient time ſuch perſonages were called Barons, and came to the Parliament, and ſate in the upper houſe; but when time had wrought ſuch an alteration, that Manors fell into the hands of meane men, and ſuch as were farre unworthy of ſo high a calling: then it grew to a cuſtome, that none but ſuch as the King

Vide Lamb. in his explication of *Saxon* words *verbo Thanus.* *Bacon* in his elements of the Law. *fol.* 41. 42. 43.

King would, should come to the Parliament, such as the King for their extraordinary wisedome or quality thought good to call by Writ, which Writ ran, *hoc vice tantum*, yet though Lords of Manors lost their names of Barons, and were deprived of that dignitie which was inherent to their names, yet their Courts retaine still the name of Court Barons, because they were originally erected, for such Personages as were Barons; neither hath time been so injurious as to irradicate the whole memory of their ancient dignitie, in their name, there is stamps left of their nobilitie, for they are still intituled by the name of Lords. These courts differ from Court Leets in divers respects: In this, that Court Barons by the Law may be kept once every three weeks, or (as some thinke) as often as it shall please the Lord, though for the better ease both of Lords and Tenants, they are kept but very seldom; but a Court Leete, by the Statute of *magna Charta*, is to be kept but twice every yeere; one time within the moneth after Easter, and another time

Magna Charta. C.35.31.E.3. Ca.15.

time within a moneth after *Michal.* 2. In this, that Court Barons may be kept in any place within the Manor, (contrary to the opinion of *Brian.*) But a Court Leete by the Statute of *Magna Charta*, is to be kept in *certo loco ac determinato*, within the Precinct. 3. In this, that originally Court Barons belonged unto inferior Lords of Manors, but Court Leets originally belonged unto the King. 4. In this, that Court Barons are incident unto every Manor, so that every Lord of a Manor may keep a Court Baron, but few have Leets; for inferiour Lords of Manors cannot keepe Court Leetes without speciall prescription, or some speciall Patent from the King. 5. In this, that in Court Barons, the suitors are Judges, but in Court Leets the Steward is Judge. 6. In this, that in Court Barons the Jewrie consisteth oftentimes of lesse than twelve, in Court Leets never; the reason of that is, because none are impanelled upon the Jewrie but Free-holders, in Court Barons, of the same Manor: But in Court Leets strangers are oftentimes impannelled.

7. In this, that Court Barons cannot ſubſiſt without two ſuitors *ad minimum*, but Court Leets can well ſubſiſt without any ſuitors. 8. In this, that Court Barons enquire of no offences committed againſt the King, but Court Leetes inquire of all offences under High Treaſon committed againſt the Crowne and dignitie of the King. In many other reſpects they differ, as that a Writ of errour lyeth upon a judgement given in a Court Leete, but not in a Court Baron. So in a Court Leete, a Capias lyeth, but in a Court Baron, in ſtead of a Capias, is uſed an Attachment by goods: So in a Court Baron, an action of debt lyeth for the Lord himſelf, becauſe the ſuitors are Judges, but in a Court Leete, the Lord cannot maintaine any action for himſelfe, becauſe the Steward is Judge; but omitting theſe with many more, I come to the Etymologie of a Manor. Some derive the word Manor *a manendo*, and then it taketh his name either from the Manor-houſe which the Lord maketh his dwelling place, or elſe *a manendo, quia Dominus ac tenentes in*

Man-

Manerii ſui circuitu cohabitant ac manent. Some thinke 'tis termed Manor from manuring the ground, and then it taketh it's name either from the Lords Demeſnes, which the Tenants are bound to Manure, or elſe from the Land remaining in the Tenants hands, which are likewiſe tilled and manured; others are of opinion, that it is derived of the *French* word *meſner*, which ſignifieth to governe or guide, becauſe the Lord of a Manor hath the guiding and directing of all his Tenants within the limits of his juriſdiction; and this I hold the moſt probable Etymologie, and moſt agreeing with the nature of a Manor: for a Manor in theſe dayes ſignifieth the juriſdiction and royalty incorporate, rather than the Land or Scite; Thus much touching the Etymologie. A word touching the diviſion of a Manor; A Manor is twofold. 1. *Re & nomine*: 2. *Nomine tantum. Re & nomine*, as where the two materiall cauſes of a Manor, the efficient cauſe, *& cauſa ſine qua non*, doe meet and joyne together. *Nomine tantùm*, as where any of theſe cauſes is wanting; as to inſiſt

in the two materiall cauſes, if the Lord will transferre over to ſome ſtranger the ſervices of all his Tenants, and reſerve unto himſelfe the Demeſnes; or if he will paſſe away the Demeſnes, and reſerve the ſervices: in both cauſes, the Lord peradventure hath a Manor, *nomine*, but not otherwiſe, becauſe in the one cauſe he wanteth Demeſnes, in the other Services. So if a Manor diſcendeth to Co-partners, and they make partition, and the intire Demeſnes are alotted to the one, and the intire ſervices to the other, the Manor is now in ſuſpence, for neither of them hath any Manor, but in name onely: but if part of the Demeſnes, and part of the Services be allotted to each one, then have they each of them a Manor, not *nomine tantùm*, but *re & nomine*. To inſiſt in the efficient cauſes, If the King at this day will grant a great quantitie of Land to any ſubject, injoyning him certaine duties and ſervices, and withall willeth, that this ſhould beare the name of a Manor, howſoever this may chance to gaine the name of a Manor, yet it will

not be a Manor in the eſtimation of the Law. To inſiſt in this cauſe, *ſine qua non*. If the King grant away a Manor to *I. S.* excepting the Courts and perquiſites, the Grantee hath a Manor in name onely: So if all the Freeholders die but one, if the Lord purchaſe all the Freeholders land, or paſſe away the Services of the Freeholders, or releaſe unto his Free-holders all their ſervices, notwithſtanding the Demeſnes and the Services of the Copy-holders, yet the Lord hath but a Manor in Name, becauſe the Freeholders are wanting, which are the maintainers and upholders of the Court Baron, and conſequently neceſſary helpe to the perfection of a Manor. So if the Lord granteth away the inheritance of all his Copyholders, or demiſeth all his Lands granted by Copie to another for 2000. yeeres, the Grantee in the one caſe, and the Leſſee in the other; have a kinde of Seigniority in groſſe, and may keep a Cuſtomary Court, where the Steward ſhall be Judge, and ſhall take ſurrenders, and make admittances; and this in the eye of the world

is a Manor, though in the judgement of the law it commeth farre ſhort of one. Thus much touching the diviſion of a Manor. I might here handle many collaterall juriſdictions, appropriated to the Lords of Manors, as that our erecting Dove-houſes, of proving the Wils of their Tenants deceaſed within their Precincts in many places; of incloſing Common, leaving ſufficient beſides for the other Commoners, with many of the like; *Sed hæc lubens libenſque omitto.* And thus cloſing up this part of my Treatiſe touching Manors: I come to the other part touching Copyhold.

SEC. XXXII.

I Need not ſtand to diſcourſe at large the antiquity of the Copyholders; for if you caſt your eye back to that is paſt, you ſhall eaſily perceive that Copyholders, though very meanly diſcended, yet they come of an ancient houſe; and therefore if in this point you deſire ſatisfaction, call to minde what I have already

ſpoken;

ſpoken; and (if I miſtake not) it will ſufficiently anſwer your deſire. Give me leave to goe a ſtep further, and to examine the ſeverall names which Copyholders have had from time to time allotted unto them, together, with their proper Etymologies: immediatly upon the Conqueſt: they were known by the name of villaines, or Tenants in Villanage; ſo termed by the *Normans*, either in reſpect of Imbecillity and incertainty of their eſtates, which were grounded upon a very weak foundation, wholly depending upon the will of the Lord, and Ouſtable at his pleaſure; or in reſpect of their Services, which ſavoured of nothing but ſlavery, whether they were *certa ac determinata*, or *incerta ac indeterminata, ubi ſciri non poterit veſpere, quale ſervitium facere deberent in Craſtino*, as *Bracton* ſpeaketh; contrary to the opinion of ſome, who hold, that the Service of Copyholders were never ſubject to ſuch incertainties: or laſtly, in reſpect of the perſons, who for the moſt part were Villaines; howſoever ſome freemen did ſometimes hold Land by the ſame te-

ture: the leaſt of theſe three reaſons is ſufficient to make them deſerve that name, but joyn them together, and then he that judgeth moſt favorably of them, will think this the trueſt title that could be beſtowed upon them: yet ſome there are, who in behalfe of theſe Tenants, ſtick not to maintaine (howſoever in reſpect of their eſtates, they may not unfitly be termed Tenants in Villanage, being in ſuch ſtrange ſubjection to their Lords) that neither in reſpect of their Services, nor their Perſons they could merit that name; eſpecially if we take the word in that reproachfull ſenſe that it is uſually taken in at this houre. But if we account thoſe villain Services which any way touch Husbandry, as Plowing, Sowing, Reaping and ſuch like, and theſe men villaines, who exerciſe themſelves in any point of Husbandry, then they argue, that their Tenure could in no wiſe have an apter terme than this; for they confeſſe, that theſe Copyholders were for the moſt part, *Ruſtici & Pagani*, and their Services wholly *ad Ruſticitatem tendentia*: Howſoever, I dare

not wholly diſallow of this opinion, though I cannot altogether approve of it, for I admit, and in a manner conſent, that amongſt the *Normans*, theſe Services, which we call Rurall Services, were called villain Services; and thoſe men whom we term Huſbandmen were termed villaines; and doe hold that the Copyhold Services in thoſe dayes were more ſlaviſh, than Rurall; and they themſelves rather Bondmen, than Husbandmen; otherwiſe we ſhould make their tenure differ in nothing from ancient Soccage tenure, which I aſſure my ſelfe is otherwiſe: for though Soccagers were Ruſtiques, and in that ſenſe Villains; yet their tenure was never noted by the name of a tenure in Villenage, till in many places their Corporall Services begun to be turned into money: then for diſtinction ſake, the one began to be called *Liberum Soccagium*, the other, *Villanium Soccagium*. But long before theſe, Copyholders were termed Villaines, and therefore without all doubt their tenure was in baſeneſſe and ſlavery, a degree above the ancient Soccage tenure; till at length

length the Lords of Manors being framed to more civility, began then to thinke it a moſt uncharitable part to keep their poore Tenants in that bondage; therefore out of the remorſe of of their own conſciences, and the compaſſion of their Tenants miſeries, by little and little, they infranchiſed them, and releaſed them of their heavier burthens, reſerving ſervices of another nature in liew of them. Thus having ſhaken off the fetters of their bondage, they were preſently freed of their opprobrious name, and had other new gentle ſtiles, and titles conferred upon them; they were every where then called Tenants by Copy of Court Role, or Tenants at will, according to the Cuſtome of the Manor: which ſtiles import unto us three things. 1. *Nomen.* 2. *Originem.* 3 *Titulum.* His name is Tenant by Copy of Court Role; for he is not called Tenant by Court Role, but by Copy of Court Role; and this is the ſole Tenant in law; who holdeth by Copy of any Record, Charter, Deed, or any other thing. 2. His commencement is at the will of the Lord.

For

For theſe Tenants in their birth, as well as the Cuſtomary Tenants upon the borders of *Scotland*, who have the name of Tenant, were meer Tenants at will: and though they keep the Cuſtoms inviolated, yet the Lord might, ſans controll, eject them: neither was their eſtate hereditary, in the beginning; as appeareth by *Britton*: for if they dyed, their eſtate was preſently determined, as in caſe of a Tenant at will at common law; and in ſome points, to this preſent houre, the law regardeth them no more, than a meer Tenant at will; for the freehold at the common law, reſteth not in them, but in the Lords; unleſſe it be in Copyholds of Frank Tenure, which are moſt uſuall in ancient Demeſne; though ſometimes out of ancient Demeſne; we ſhall meet with the like ſort of Copyholds, as in *Northamptonſhire*, there are Tenants which hold by Copy of Court Role, and have no other evidence, and yet hold not at the will of the Lord. Theſe kinde of Copyholders have the Frank Tenure in them, and it is not in their Lords, as in caſe of Copyholds in baſe

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baſe tenure. Beſides, Copyholders ſhall not attourn upon the granting away of the Manor, no more than Tenants at will at the Common law; and their eſtate can be no infranchiſement to a villaine, no more then a meere eſtate at will. And further, their lands are parcell of the Lords Demeſnes, as well as lands granted away at Will, according to the courſe of the common law; and for his title and aſſurance, that is according to the cuſtome of the Manor: For the Cuſtome of the Manor hath ſo eſtabliſhed, and ſo fixed them in their land, that if they doe their Services and Duties, and perform cuſtomes of the Manor, they are as well inheritable, according to the cuſtome, as he that hath a Frank Tenement at the common law: and fithence cuſtome is the life and ſoule of Copyhold Eſtates, and whatſoever ſhall, or can be ſpoken touching Copyholds, ariſeth from this Head, and from this fountaine; Give me leave in the ſecond place to ſpeake ſomthing concerning them.

Sec. XXXIII.

CUſtomes are defined to be a law, or Right not written, which being eſtabliſhed by long uſe, and the conſent of our Anceſtors hath been, and is dayly practiſed.

Cuſtome, Preſcription, and Uſage; howſoever there be correſpondency amongſt them, and dependancy one on the other, and in common ſpeech, one of them is taken for another, yet they are three diſtinct things. Cuſtom and preſcription differ in this. 1. Cuſtom cannot have any commencement ſince the memory of man, but a Preſcription may, both by the common law, and the Civill: and therefore where the Statute. 1. *H.* 8. ſaith, that all actions popular; muſt be brought within three yeares after the offence committed; whoſoever offendeth againſt this Statute, and doth eſcape uncalled for three yeeres, he may be juſtly ſaid to preſcribe an immunitie againſt any ſuch Action. 2. A Cuſtome toucheth many men in generall; Preſcription,

Cuſtome, Preſcription, and Uſage, how they differ.

tion, this, or that man in particular: and that is the reason why Prescription is personall, and is alwayes made in the name of some person certaine, and his Ancestors, or those whose estate he hath; but a Custome having no person certaine in whose name to prescribe, is therefore called and alledged after this manner. In such a Borough, in such a Manor, there is this or that Custome. And for Usage, that is the efficient cause, or rather the life of both; for Custome and Prescription lose their being, if Usage faile. Should I goe about to make a Catalogue of severall Customes, I should with *Sisiphus, saxum volvere,* undertake an endlesse peece of worke, therefore I will forbeare, since the relation would be an argument of great curiositie, and a taske of great difficultie: I will onely set down a briefe distinction of Customs, and leave the particulars to your own observation. Customes are either Generall or Particular. Generall, which are part of the Common law, being currant through the whole Common-wealth, and used in every

County,

County, every Citie, every Towne, and every Manor. Particular, which are confined to ſhorter bounds and limits, and have not ſuch choice of fields to walke in, as generall Cuſtomes have. Theſe particular Cuſtomes are of two ſorts, either diſallowing what generall Cuſtomes doe allow, or allowing what generall Cuſtomes doe diſallow, as for example ſake. By the generall Cuſtoms of Manors, it is in the Copiholders power to ſell to whom hee pleaſeth, but by a particular Cuſtome uſed in ſome places, the Copyholder, before he can inforce his Lord to admit any one to his Copyhold, is to make a proffer to the next of the blood, or to the next of his Neighbors, *ab oriente ſolis*, who giving as much as the party to whom the Surrender was made, ſhould have it: ſo on the other ſide, by the generall Cuſtomes of Manors, the paſſing away of Copyhold land by Deede, for more than for one yeere without licence, is not warranted; yet ſome particular cuſtomes in ſome Manors doe it: ſo by the generall Cuſtomes of Manors, Preſentments, or

any

any other Act done in the Leete, after the moneth expired, contrary to the Statute of *Magna charta*, and 31. E. 3. are void; yet by ſome particular Cuſtomes, ſuch acts are good, and ſo in millions of the like, as in the ſequell of this diſcourſe ſhall be made manifeſt. And therefore, not to inſiſt any longer in dilucidating this point, let us in few words learne the way how to examine the validity of a Cuſtome: For our direction in this buſineſſe, we ſhall doe well to obſerve theſe ſixe Rules, which will ſerve us for exact tryall. 1. Cuſtomes and Preſcriptions ought to be reaſonable, and therefore a Cuſtome that no Tenant of the Manor ſhal put in his Cattell to uſe his common in *Campis ſeminatis*, after the Corne ſevered, untill the Lord have put in his Cattell, is a void Cuſtome, becauſe unreaſonable, for peradventure the Lord will never put in his Cattell, and then the Tenants ſhall loſe their profits: ſo if the Lord will preſcribe that he hath ſuch a Cuſtome within his Manor, that if any mans beaſts be taken by him upon his Demeſnes damage Feſant, that

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he may detaine them untill the owners of the beasts give him such recompence for his harmes, as hee himselfe shall request; this is an unreasonable Custome, for no man ought to be his owne Judge. 2. Customes and Prescriptions ought to be according to common right, and therefore if the Lord will prescribe to have of every Copyholder belonging to his Manor, for every Court he keepeth a certaine summe of money, this is a void prescription, because it is not according to common Right, for hee ought for Justice sake to doe it *Gratis*; but if the Lord prescribe to have a certaine Fee of his Tenants, for keeping an extraordinary Court, which is purchased only for the benefit of some particular Tenants, to take up their Copyholds and such like; this is a good prescription, and according to common right. 3. They ought to be upon good consideration, and therefore if the Lord will prescribe that whosoever passeth through the Kings High-way which lyeth through his Manor, should pay him a peny for passing, this prescription is void, because

it is not upon a good consideration; but if he will prescribe to have a peny of every one that passeth over such a bridge within his Manor, which bridge the Lord doth use to repaire, this is a good prescription, and upon a good consideration. So if the Lord will prescribe to have a fine at the marriage of his Copyholder, in which Manor the custome doth admit the Husband to be Tenant by the courtesie, or the feme Tenant in Dower of a Copyhold, this prescription is good, and upon a good consideration; but in such Manors, where these estates are not allowed, the Law is otherwise. 4. They ought to be compulsary, and therefore if the Lord will prescribe that every Copyholder ought to give him so much every moneth to beare his charges in time of warre, this prescription is void; but to prescribe they ought to pay so much money for that purpose, is a good prescription; for a payment is compulsary, but a gift is Arbitrary at the voluntary liberty of the giver. 5 They ought to be certain; and therefore, if the Lord will prescribe that

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whensoever any of his Copyholders die without heire, that then another of the Copyholders shall hold the same lands for the yeer following, this prescription is void, for the incertainty; but if the Lord will prescribe to have of his Copyholders, 2d. an Acre Rent, in time of warre 4d. an Acre, this prescription is certain enough. 6. They ought to be beneficiall to them that alledge the prescription; and therefore if the Lord prescribeth that the custome hath alwayes beene within the Manor, that what distresse soever is taken within his Manor, for any common persons cause, is to be impounded for a certaine time within his pound; this is no good prescription, for the Lord is hereby to receive a charge, and no commoditie: but if the prescription goeth further, that the Lord should have for every beast so impounded a certaine summe of money, this is a good prescription. If we desire to be more fully satisfied in the generall knowledge of prescriptions and Customes, we shall finde many Maximes, which make very materiall for this purpose, amongst which, I

have made choyce of these three, as most worthy of your observation.

1. Things gained by matter of Record only, cannot be challenged by prescription, and therefore no Lord of a Manor can prescribe to have fellons goods, fugitives goods, Deodands and such like; because they cannot be forfeited untill it appeare of Record: but waives, estraies, wrecks, and such like may be challenged by prescription, because they are gained by usage, without matter of Record.

2. A custome never extendeth to a thing newly created; and therefore if a Rent be granted out of Gavelkind-Land, or land in *Borough-English*, the rent shall descend, according to the course of the Common law, not according to the Custome. If before the *Statute*. 32. *H.* 8. Lands were deviseable in any Borough, or City by speciall Custome; A Rent granted out of these Lands, was not deviseable by the same Custome; for what things soever have their beginning since the memory of man, Custome maintains not. If there be a Custome within a Manor, that for

every

every house or cottage, 2ª. Fine shall be paid, if any Tenant within these liberties maketh two houses of one, or buildeth a new house, hee shall not pay a fine for any of these new houses; for the Custome onely extendeth to the old. So if I have Estovers appendant to my house, and I build a new house, I shall not have Estovers for this new built house upon this ground. It hath been doubted, if a man by Prescription hath course of water to his Fulling-mill, he converting these into Corne-Mills, whether by this conversion, the Prescription is not destroyed, in regard that these corne-mills are things newly created; but because the qualitie of the thing, and not the substance is altered; therefore this alteration is held insufficient to overthrow the Prescription; for if a man by Prescription hath Estovers to his house, although they alter the Roomes and Chambers in the house, as by making a Parlour, where there was a Hall, *vel è converso*, yet the Prescription stands still in force: and so if by Prescription I have an ancient Window to my Hall,

and I convert this into a Parlour, yet my neighbours upon this change cannot ſtop my Window; *Cauſa quæ ſupra.* 3. Cuſtomes are likewiſe taken ſtrictly, though not alwayes literally. There is a cuſtome in *London*, that citizens and freemen may deviſe in Mortmayne: A citizen that is a forreiner, cannot deviſe by this cuſtome. An Infant by the cuſtome of *Gavelkind*, at the age of fifteene, may make a Feoffment; yet he cannot by the cuſtome make a Will at that age to paſſe away his Land; to make a Leaſe, and a Releaſe, which amounteth to a Feoffment. If there be any cuſtome that copyhold-lands may be leaſed by the Lord, *vel per Superviſor, vel deputatum ſuperviſoris*: This cuſtome giveth not power to the Lord, to authorize any by his laſt Will and Teſtament, to keepe a court in their owne name, and to make Leaſes, *Secundum conſuetudinem Manerii*: but theſe cuſtomes have this ſtrict conſtruction, becauſe they tend to the derogation of the common law; yet they are not to be confined to literall interpretation; for if there be a cuſtome

ſtome within any Manor, that copyhold lands may be granted in *Feodo ſimplici*, by the ſame cuſtome they are grantable to one, and the heires of his body, for life, for yeeres, or any other eſtate whatſoever; becauſe, *Cui licet quod majus, non debet quod minus eſt non licere*; ſo if there be a cuſtome that copyhold lands, may be granted for life; by the ſame cuſtome they may be granted, *Durante viduitate*, but not *è converſo*, becauſe an eſtate during Widdowhood, is leſſe then an eſtate for life. Before the *Statute* of 32. *H.*8. Lands in certaine Boroughs were deviſable by cuſtome: By the ſame cuſtome was *implicitie* waranted, authorizing Executors to ſell lands deviſable. Now with your patience, I will onely point at the manner of pleading of cuſtomes, I finde a foure-fold kinde of Preſcribing.

1. To preſcribe in his Predeceſſours, as in himſelfe, and all thoſe whoſe eſtate he hath.

2. To preſcribe generally, not tying his Preſcription to place, or perſon, as where a Chiefe Juſtice preſcri-

ſcribeth, that it hath been uſed, that euery Chiefe Juſtice may grant Offices, or where a Sergeant preſcribeth, *Quod talis habetur conſuetudo*, that Sergeants ought to be impleaded by originall Writ, and not by Bill.

3 To Preſcribe a place certaine.

4 To preſcribe in the place of another.

The firſt ſort of theſe Preſcriptions, a Copyholder cannot uſe, in regard of the imbecillity of his eſtate; for no man can Preſcribe in that manner, but onely Tenants in Fee ſimple, at the Common Law.

The ſecond ſort of theſe may be uſed ſometimes by Copyholders in the pleading of a generall Cuſtome, but in alledging of a particular Cuſtome, a Copyholder is driven to one of the laſt, and as occaſion ſerveth, he uſeth ſometimes the one, ſometimes the other. If he be to claime Common, or other profit in the ſoyle of the Lord, then he cannot Preſcribe in the name of the Lord, for the Lord cannot Preſcribe to have Common or other profit in his owne ſoyle; but then the Copyholder muſt of neceſſitie Preſcribe in a place certaine, and alleadge,

alleadge, that within such a Manor, there is such a custome, that all the Tenants within that Manor, have used to have common in such a place, parcell of the Manor: but if he be to claime common, or other profit in the soyle of a stranger, then he ought to prescribe in the name of his Lord, saying, that the Lord of the Manor, and all his Ancestors, and all those whose estate he hath, were wont to have a common in such a place for himselfe, and his Tenants at will, &c.

Sec. XXXIV.

THus much of customes. I come now home to Copyholders: and in the third place I hold it the best course to dilate upon the manner and meanes of granting Copyholds; wherein I will onely rely upon these five parts.

1 Upon the person of the Grantor.
2 Upon the person of the Grantee.
3 Upon the Grant it selfe.
4 Upon the thing Granted.

5 Upon

5 Upon the Instruments, through whose hands, as through Conduit-pipes, the lands are *gradatim* conveyed to the Purchasor.

And first, of the person of the Grantor. Sometimes the Lord himselfe is Grantor; sometimes a Copyholder. In voluntary Grants made by the Lord himselfe, the law neither respecteth the quality of his Person, nor the quantity of his Estate; for be he an Infant, and so through the tendernesse of his age, insufficient to dispose of any land at the Common law, or *non compos mentis*, an Idiot, or a Lunatique; and so for want of common reason, unable to traffique in the world; or an Out-law in any personall action, and so excluded from the protection of the law; or an Excommunicate, &c. and so restrained, *ab omnium fidelium communione*, or at least, *à Sacramentorum participatione*: notwithstanding these infirmities and disabilities, yet he is capable enough to make a voluntary Grant by Copy, for if a *feme seigniore esse* take Baron, and they two joyn in a voluntary Grant by

by Copy, this ſhall ever binde the *Feme* and her heires, and yet ſhe is not *ſui juris*, but *ſub poteſtate viri*, becauſe the cuſtome of the Manor is the chiefe *baſis*, upon which ſtands the whole fabrick of the Copyhold eſtate: and therefore what cuſtome doth confirme to a Copyholder, the law will ever allow, and never ſeeke to avoid it, in reſpect of any ſuch imperfection in the Grantors perſons; and the quantity of the Lords eſtate is no more reſpected than the quality of his perſon: for if his intereſt be lawfull, be his eſtate never ſo great, or never ſo little 'tis not materiall; for be it in Fee, or be it in tayle or dower, or as Tenant by courteſie, for life or for years, as Guardian, or as Tenant by Statute, or as Tenant by Elegit, or at will; the leaſt of theſe eſtates, is a ſufficient warrant to the Lord, to Grant any Copyhold eſcheated unto him, for as long time as the cuſtome doth allow; the ancient Rents and Services, being truely reſerved: and theſe Grants ſhall ever binde them that have the Inheritance, or Frank-Tenement of the Manor, as well as offices

offices granted for life, by the chief Justice of the *Common Pleas*, whose office is but at will, shall ever conclude the succeeding Justice. The reason of the Law is this: A Copyholder upon voluntary Grants made by Copy, doth not derive his estate out of the Lords estate only, for then the Copyholders estate should cease, when the Lords interest determineth, *Nam cessante primitivo cessat derivativum*, but the life of the Copyholders estate is the custom of the Manor, and therefore what soever beideth the Lords interest in his Manor, be it determined by the course of time, by death, by forfeiture, or other meanes, yet if the Lord were *Legitimus Dominus pro tempore*; how small soever his estate was, that is enough: for the same custome that fixeth a Copyholder instantly in his land upon his admittance, will likewise preserve, and protect his interest, to the end, in such manner, that though the Lords interest faileth, yet his shall never fall to ground, being upheld by such a proppe, such a pillar, unlesse perchance the Copyholder offer violence

lence to his Founder in breaking the cuſtome. If the Lord granteth a Copyhold from the Manor, by granting the inheritance to a ſtranger, though now one of the chiefe pillars of a Copyhold eſtate is wanting, *viz.* to be parcell of the Manor; yet becauſe the Land, at the time of the Copyholders admittance, had this neceſſary incident, this ſeverance, being a matter *ex poſt facto*, cannot amount to the deſtruction of the Copyhold, eſpecially being the ſole act of the Lord himſelfe. If a Manor be granted upon condition, and before the condition is broken, the Land is granted by Copy, then the Manor becomes forfeited, and the Feoffer entreth; yet the Copyhold eſtate remaineth untouched, becauſe lawfully eſtabliſhed by cuſtome, and yet all mean eſtates and charges whatſoever granted by the Feoffee at the common law, were voidable upon the entry of the Feoffor, for we have a ground in law, that when an entry is made for breach of a condition, the party to all intents and purpoſes, is in the ſame plight that he was in at the time

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of the making of the eſtate. If a man ſeized of a Mannor in Fee, dyeth ſeized, having iſſue, a Daughter, and his wife being *privement inſeint* with a ſonne, and the daughter granteth lands by Copy, this Grant ſhall ſtand good againſt the ſonne, for the daughter was *Legitima Domina pro tempore*. So if the Feoffee of a Manor, upon condition to infeoffee a ſtranger, the next day maketh a voluntary Grant by Copy, this ſhall binde, and yet his intereſt was to have but ſmall continuance. If a Manor be granted with a *feme* in Franke marriage, and there is a divorce had, *cauſe precontractus*; ſo that now the intereſt of the Manor is granted to the *feme* onely, and by relation, the marriage is void, *ab initio*: yet becauſe the Baron was *Legitimus Dominus pro tempore*, any Copyholders eſtates granted, before the divorce, remaines good. So if a man eſpouſeth a *feme ſeignioreſſe*, under the age of conſent, and after ſhe doth diſagree, though the marriage by relation was void, *ab initio*, yet Copyholds granted before diſagreement, ſhall ne-

ver bee avoided, *cauſa qua ſupra.*

If the Lord of a Manor committeth felony or murder, and proces of outlawry be awarded againſt him; after the Exigent, he granteth Copyhold eſtates, according to the cuſtome, and then is attainted, theſe Grants are authenticall, though by relation, the Manor was forfeited from the time of the Exigent awarded. So if the Lord had been attainted by Verdict, or confeſſion; any Grant by Copy, after the felony, or murder committed, ſhall ſtand good, notwithſtanding the relation. If the Lord of a Manor acknowledge a Statute, and then granteth lands by Copy; and after the Manor is delivered to the Cogniſee in extent, the Grant cannot by this be impeached. And if the Lord of a Manor taketh a wife, and after maketh Copyhold eſtates, according to the cuſtome, and dieth, though the *feme* hath this Manor aſſigned unto her for her Dower, yet cannot ſhe avoid theſe Copyhold eſtates, becauſe the Copyholders are in by a title Paramount, the title of the *feme, viz.* by cuſtome. But peradventure, if the

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heire after the death of his Anceſtor before the aſſignment made unto the *feme* for her Dower, had granted Lands by Copy, the *feme* might avoid theſe Grants, becauſe inſtantly upon the death of the Baron, her title received his perfection, and nothing more was wanting to the confirmation of her Intereſt: but though the quantity of the Lords eſtate in the Manor be not reſpected, yet the quantity of his eſtate in the Copyhold is regarded; For if a Copyholder in Fee, ſurrender to the uſe of the Lord for life, the Remainder over to a ſtranger, or reſerveth the Reverſion to himſelfe; if the Lord will Grant this by Copy in Fee, whatſoever eſtate the Lord hath in his Manor; yet having but an eſtate for life in the copyhold; no larger eſtate ſhall paſſe, then he himſelfe hath, *Quia nemo poteſt plus juris in alium transferre quam ipſe habet*: and further obſerve, that ſometimes the law reſpecteth the quantity of the Lords eſtate in the Manor, for what acts ſoever are not confirmed by cuſtome, but only ſtrengthened by the power,

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authority and interest of the Lord, have no longer continuance than the Lords estate continueth: and therefore it is held, that if a Tenant for life of a Manor, granteth a licence to a copyholder to Alien, and dieth, the licence is destroyed, and the power of alienation ceaseth. As for the quality of the Lords estate in the Manor, that is much more now respected, than either the quantity of his estate, or the quality of his person: for if the Lord or he who soever it be that maketh a voluntary Grant by copy, hath no lawfull interest in the Manor, but onely an usurped title, his Grant shall never so binde the right owner, but that upon his entry he may avoide them, otherwise we should make custome an agent in a wrong, which the law will never suffer; and yet if the Lord of a Manor by his Will in writing deviseth, that his Executor shall Grant copyhold estates, *Secundum consuetudinem Manerii*, for the payment of his debts, &c. and they make voluntary Grants accordingly: these Grants are good, notwithstanding the Executor hath no interest in the

Manor, nor is *Dominus pro tempore*.

If a Disseisor of a Manor dieth seised, notwithstanding his heire come in by ordinary course of discent, yet because the Tort commenced by his Ancestor, is still inherent to his estate; if any copyhold estate be granted by the heire, it may be avoided by the Disseisor, immediately upon his recovery, or upon his entry; and so if the Disseisor infeoffe a stranger of the Manor; notwithstanding the feoffee come in by title, yet no Grant made by him of copyhold land, shall ever binde the Disseised, no more than a Grant made by the Disseisor himselfe.

If Tenant in taile of a Manor discontinueth and dieth; and after the discontinuance Granteth copyhold estates, the heire recovering in a Formidon in the Discender, may avoide these Grants; for though the Discontinue come in under a just title, yet his interest being determined by the death of the tenant in tayle, the continuance of the possession is a tort to the heire, and Acts done by Tortfeisors

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tending to the dis-inheritance of the right owners customs, will never so strengthen, but they may be anihilated. So if a man seised of a manor in right of his wife, Alieneth this manor and dieth, any Grant made of copyhold estates, after his death may be avoided by the *feme*, upon her entry, or upon her recovery, in a *Cui in vita*.

If a manor be Granted, *pr. aut. vie*, and *Cestuy que vie* dieth, and the Grantee continueth still in the manor, and maketh Grants by copy, these shall not binde the Grantor of the manor; for immediately upon the death of *Cestuy que vie*, the Grantee was but a Tenant at sufferance, and had no manor of lawfull interest, for a Writ of Entry, *ad terminum qui preteriit*, lieth against him, as against Deforceor.

And so if a Tenant for life of a manor maketh a Lease for yeares of the same manor and dyeth; Copyhold estates granted by the lessee, after the death of the Tenant for life, are voidable by the first lessor.

If a lessee for years of a manor

granteth a copyhold in Reverſion, and before the reverſion eſchue, the terme is expired, the Grant is void, and ſo I take the law to be, if the Leſſee ſurrendreth his terme, and then before his leaſe ſhould have ended in point of limitation, Reverſion falleth, yet the Grantee ſhall not have it.

If a Leaſe be made for yeeres of a Manor, the leaſe to be void upon the breach of a certaine condition, if the condition be broken, and afterwards the leſſee before the entry of the leſſor, granteth eſtates by copy; theſe Grants ſhall never exclude the leſſor: for preſently upon the breach of the Condition, the leaſe is void, but had the Manor been granted for life, in Tayle or in Fee, I think law would have fallen out otherwiſe, for before entry, the Frank-Tenement had not been avoided, and whereſoever a man may enter and avoid any eſtate of Frank-tenement, upon the breach of a condition, the law adjudgeth nothing to be in him before entry, and he may waive the advantage which he might take by the breach of the condition if he will, and therefore not-

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withſtanding the accruer of the title of the Grantor: yet before this title be executed by entry, the Grantee hath ſuch a lawfull intereſt, that what eſtate ſoever he granteth by Copy, in the interim ſhal ſtand good againſt the Grantor. And ſo if an Infant infeoffe me of a Manor, though he may enter upon me at his pleaſure, yet Grants made by me, by copy, before his entry; ſhall never be defeated by any ſubſequent entry.

And the ſame Law is of Grants made by a Villaine purchaſer of a Manor, before the entry of the Lord, or of Grants made after an alienation in Mortmayne, before the Lord Paramount hath entered for a forfeiture.

If a Parſon after Inſtitution, and before induction, a Manor being parcell of his Gleab Lands, grants Lands by Copy, and after is inducted: this admitting of the Copyholders, is no binding act, for though, as to the ſpiritualties, he be a compleate Parſon, preſently upon the inſtitution, yet as to the temporalities, hee is not compleate before Induction. So if a Par-

ſon be admitted, inſtituted and inducted, but doth not ſubſcribe to the Articles, according to the Statute of 13. *Eliz.* and granteth Lands by Copy, as before: This Grant ſhall not conclude the ſucceeding Incumbent, becauſe his Admiſſion, Inſtitution, and induction, were wholly voide in themſelves; but had the Parſon been deprived for crime or hereſie, or for being meere *Laicus*, although he be declared by ſentence, to be uncapable of a Benefice; and ſo his preſentment, voide (*ab initio*) yet becauſe the Church was once full, untill the ſentence declaratory came; for though the deprivation ſhall relate to ſome purpoſes, yet becauſe the Preſentment, is not in it ſelfe voide, ſurely a relation ſhall never be ſo much favoured, as to avoide a Copyhold eſtate in this kinde.

So much of Grants made by the Lords themſelves. In Grants made by Copyholders, as the Law reſpecteth the quality of the Copyholders eſtate, ſo doth it reſpect both the quality of his perſon, and quantitie of his eſtate.

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The quality of perſon; for whoſoever is uncapable of diſpoſing of Land at the Common Law, cannot without ſpeciall Cuſtome, paſſe away any Copyhold. The quantitie of his eſtate; for no Copyholder can poſſibly paſſe away more than is in him; and therefore, if there be joynt Tenants of a Copyhold, one cannot alienethe whole. But if there be two joynt Tenants of a Manor, and a Copyholder eſcheateth, one of them may grant this Copyhold, and his Companion ſhall never avoide any part of it.

If a Copyholder for life, the remainder over in Fee to a ſtranger, ſurrendereth in Fee, and the Lord admits accordingly, yet an eſtate for life onely paſſeth.

So if the Lord of a Manor granteth a Copyhold for life, where an eſtate in Fee is warrantable, and the ſame Grantee ſurrenders in Fee, to the uſe af a ſtranger; and the Lord admits him, *ſecundum officium ſurſum redditionis*; I think no Fee paſſeth for though the Lords admittance may, *primæ facie*, ſeeme to amount to a confirmati-

pon of the eſtate ſurrendered; the Reverſion reſting in him to diſpoſe of, according to the Cuſtome; as where a Leſſee for yeeres, at the Common Law, maketh a Feoffment in Fee, and maketh a Letter of Attorney to his Leſſor, to deliver Livery and ſeiſin, who executeth it accordingly, though the Leſſor be uſed as an inſtrument to performe the will of the Leſſee; yet this being his voluntary act, the Law taketh it as a conſent for the paſſing away of the whole inheritance; but if you look narrowly into both Caſes, you ſhall finde the difference in the Latter Caſe, by the Feoffment, the Fee is deveſted out of the Leſſor; and therefore a conſent will ſerve to tranſferre the Reverſion; but in the former Caſe, the Reverſion is not pluckt out of the Lord, by the Surrender, and therefore an implied conſent is too weake to remove it. I will onely adde one obſervation more, and ſo I will end with the Grantor.

The Law is not ſo ſtrict to a Copyholder, as that he muſt come perſonally into Court, upon making of every Surrender, but they may Surren-

render by Attorney, as well as Livery and Seisin may be made by Attorney at the Common Law; and should the Law be otherwise, great inconveniencie would ensue; for how should Copyholders that are in prison, or languishing upon bed, or beyond the Seas, surrender, but by Attorney.

But note this difference, if a man hath a bare Authority joyned with a Confidence without interest, this Authority cannot be executed by Attorney; and therefore If I devise, that my Executors shall sell my Land, they cannot sell it by Attorney, for that were to make an Attorney upon Attorney, which the Law will in no wise permit; and though a man have an Authority joyned with an interest, yet if the Authoritie be warranted by speciall custome onely, it cannot be executed by an Attorney: and therefore if there be a speciall Custome, that a Copyholder for life may make estate, for 20. yeers to continue after his death, these estates cannot be made by Attorney. So if there be a speciall Custome, that an Infant at the age of discretion may surrender a

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Copyhold; this Surrender being confirmed by ſpeciall Cuſtome onely, cannot be made by Attorney. And ſo if there be a cuſtome, that a Copyholder out of the Court may ſurrender into the hands of the Lord, by the hands of two Cuſtomary Tenants, ſuch Surrenders muſt be done in perſon.

But whereſoever there is a generall Authoritie, accompanied with an intereſt, that Authoritie may be executed by Attorney, as *Ceſtuy que uſe*, after the Statute of 1. *R.* 3. and before the Statute 27. *H.* 8. might have alienned by Attorney; for at that time he had an abſolute Authority to diſpoſe of the Land at his pleaſure, without any confidence repoſed in him. And thus much of the Grantor; A word of the Grantee.

SEC. XXXV.

THe ſame perſons that are capable of a Grant by the Common Law, are capable of a Grant by Copy, according to the Cuſtome of the Manor.

An Infant, a man of *non ſanæ memoriæ*, an Ideot, a Lunatique, an Outlaw, or an Excomunicate, may be Grantees of a Copyhold eſtate.

The Lord himſelfe may take a Copyhold to his owne uſe, one joynt Tenant may receive a Copyhold from the hands of his joynt companion, becauſe it paſſeth by Surrender, not by Livery.

A *feme* covert may be a purchaſer of Copyhold, and this purchaſe ſhall ſtand in force, untill her Husband diſagreeth. Nay, further, a *feme* covert may receive a Copyhold eſtate by ſurrender from her husband, becauſe ſhe commeth not in immediately by him, but by mediate meanes, *viz.* by the admittance of the Lord according to the Surrender.

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As the *Feme* is capable of receiving a Copyhold from the hands of the Baron; ſo by ſpeciall Cuſtome, the Baron may take a Copyhold from the hands of his *Feme*, for in ſome Manors, cuſtomes do enable the *Feme* to deviſe a Copyhold to the Baron, but this cuſtome hath been much impugned, therefore I dare not juſtifie the validity of it.

What perſons ſoever are capable of a Grant by Copy, may well take by Attorney, not that the Lord ſhall be enforced to admit any one by Attorney, becauſe upon every admittance, there is fealty due by the party admitted, which is a duty ſo inſeparably annexed to the perſons, that it cannot be diſcharged by deputy, and therefore no reaſon the Lord ſhould be enforced to admit by Attorney, but if he will admit him, it ſtandeth good.

It is not neceſſary, that upon Surrenders of Copyholds, the name of the partie to whoſe uſe the Surrender is made, be precifely ſet down; but if by any manner of circumſtance, the Grantee may be certainly known, it

is ſufficient. And therefore a Surrender made to the Lord Archbiſhop of *Canterbury*, or the Lord Major of *London*, or the high Sheriffe of *Norfolke*, without mentioning either their Chriſtian-name, or Sir-name, are good enough, and certaine enough, becauſe they are certainly known by this name, without further addition. So if I Surrender to the uſe of the next of my blood, to the uſe of my wife, to the uſe of my brother or ſiſter, having but one brother, or one ſiſter, theſe Surrenders are good without any additions, becauſe the Grantee may certainely be knowne by theſe words.

If I Surrender generally into the hands of the Lord, not expreſſing to whoſe uſe the Surrender ſhall be, this Surrender is a good Surrender, and ſhall enure to the benefit of the Lord.

If I Surrender to the uſe of my ſon *W.* having more ſonnes than one of that name, yet by an averment, this incertainty may be helped.

But if I ſurrender to the uſe of my coſin, or my friend, this is ſo generall,

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and so incertaine, that no subsequent manifestation of my intention can any way strengthen it.

So if three Surrender, to the use of three or foure of S^t. *Dunstons* Parish, not naming the Parishioners by their names, this Surrender is utterly voide.

And so if I Surrender in the disjunction to the use of *I. L.* or *I. N.* this is insufficient for the incertainty.

And in customary Grants upon Surrenders, the Law is not so strict, as in Grants at the Common law, for in Grants at the common Law, if the Grantee be not *in rerum natura*, and able to take by vertue of the Grant, presently upon the Grant made, it is meerely void. But in customarie Grants upon Surrenders, the law is otherwise: for though at the time of the Surrender, the Grantee is not in *esse*, or not capable of a Surrender, yet if he be in *esse* and capable at the time of the Admittance, that is sufficient; and therefore if I Surrender to the use of him that shall be heire to *I. S.* or to the use of *I. S.* next childe, or to

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the uſe of *I. S.* next wife; though at the time of the Surrender *I. S.* had no heire, childe, or wife: yet if afterwards he hath a childe, or taketh a Wife, his heire, his childe, or his wife may come into the Court, and compell the Lord to admit according to the Surrender. So if I Surrender to the uſe of him that ſhall come next into *Pauls* after ſuch an houre, whoſe fortune ſoever it is to come firſt, the Lord muſt admit, and I ſhall never avoide it.

The ſame law is, if I Surrender to the uſe of him, that *I. S.* ſhall nominate, or that I my ſelfe ſhall nominate to the Lord at the next meeting; the reaſon of the law is this, a Surrender is a thing executory, which is executed by the ſubſequent Admittance, and nothing at all is inveſted in the Grantee, before the Lord hath admitted him according to the Surrender, and therefore if at the time of the Admittance the Grantee be in *rerum natura*, and able to take, that will ſerve.

Beſides in Cuſtomary Grants, the intent of the Grantor is more reſpected

ched than it should be by the strict rules of the law, which appeareth by this; that if a surrender be made of a Copihold to the use of a last Will, and the surrender deviseth it unto two the one is admitted according to the purport of the Will, this shall inure to both; but though the Surrender be a thing executory, and the intent of the Grantor so much favored: yet if a Copiholder will Surrender to the use of the right heires of *I. S.* he being alive, this is void because it cannot take effect according to the intent of the Grantor; for he would have the grant to be executed presently, which cannot be in regard that *I. S.* can have no heire till after his death. So much of the Grantee, and I come now to the Grant it selfe.

Sec. XXXVI.

A Copyhold interest cannot be transferred by any other, assurance then by copy of Court Role, according to the custome.

If I will exchange a copyhold with another, I cannot doe it by an ordinary

nary exchange at the common law, but we muſt ſurrender to each other's uſe, and the Lord admit us accordingly.

If I will deviſe a Copihold I cannot doe it by will at the common law, but I muſt Surrender to the uſe of my laſt Will and Teſtament, but in my Will I muſt declare my intent.

If I am cuſted by a Copyholder, a releaſe made to him is void, becauſe it would be a prejudice to the Lord, & beſides there is no cuſtomary right upon which the releaſe may inure; but a releaſe inuring by way of extinguiſhing where no prejudice accrueth to the Lord, will ſerve to drown a Copyhold right, and therefore if I ſurrender out of Court upon condition, to the uſe of *I. S.* and the preſentment is made abſolute in Court, and the admittance framed accordingly, this admittance and preſentment differing from the effect of the Surrender, are both voide. Yet becauſe upon the admittance the Lord is ſatisfied of his fine, and ſo nothing at all prejudiced, and beſides here is a cuſtomary right, *Co. 4. f. 25.*

upon which the releaſe may be grounded, I may by a releaſe at the common law, ſufficiently confirme this voide eſtate. And ſo upon the ſame reaſon if I am ouſted of a Copyhold, and the Lord admit him according to the cuſtom, a releaſe made by me at the common law will extinguiſh my right; but if I make a leaſe for yeares of a Copyhold, I cannot by my releaſe paſſe my Reverſion, becauſe this releaſe injureth by way of inlargement to transferre an intereſt, and not by way of extinguiſhment; to drown a right, but my way is to ſurrender my reverſion into the hands of the Lord, and he to Grant it over to the leſſee.

Sec. XXXVII.

IF Copyhold land come into that plight that it cannot paſſe by Copy, it is become not alienable, and therefore if the Lord of a Manor will grant to me a Copyhold in Fee, and after will grant the inheritance of this Copyhold to a ſtranger, in regard that now my Copyhold is become no par-

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cell of the Manor, and so I cannot surrender into the hands of the Lord and the Grantee of the inheritance, though I am to him a tenant, and am tyed to doe unto him all manner of services which are due without keeping of Court; as to pay Rent, to discharge Herriots and all other Duties of the same nature: yet because the Grantee cannot keep a Court, and so is incapable of taking a Surrender, or making an admittance, therefore I cannot by any meanes alien, for no conveiance at the common law will serve, because it remaineth still Copyhold notwithstanding, and what customs soever were incident to the land before severance, doe remain still undestroyed; as if the land were Burrow English, or Gavelkinde before, it so continueth, and a decree in Chancery will not serve no more than an ordinary assurance at the common law; for that bindeth my person only, not my interest: fithence therefore Copyhold estates cannot be conveied away otherwise than by Copy of Court role, according to the custome, let us examine the nature of these customarie *Co. 4. fo. 24.*

grants, wherein three branches are to be considered.

1 The Surrender.
2 Presentment.
3 Admittance.

In some Grants a Surrender is sufficient without Presentment or Admittance.

In some an Admittance without a Surrender or Presentment.

In some a Surrender and Admittance, and both necessary; and in some, a Surrender, Presentment, and Admittance, are all requisite.

Sect. XXXVIII.

IF a Copiholder will Surrender to the use of the Lord, the interest of the Copyhold is sufficiently vested in the Lord immediately upon the Surrender, without any admittance of the Lord, because the Lord cannot admit himself.

If the Lord will make a voluntary grant of a Copihold, no Surrender is requisite, for by the admittance

mittance of the Lord according to the cuſtome, the Copyholder is ſufficiently ſetled in this land without any other ceremony.

If a Copyholder will Surrender in Court to the uſe of a ſtranger, beſides the ſurrender, the Admittance is requiſite; and if the Surrender be made out of Court into the hands of the Lord himſelf, which the generall cuſtome will warrant, or into the hands of the Bailiffe, or of two Tenants of the Manor, which by ſpeciall cuſtome onely is warantable, beſides a Surrender, two other ceremonies are requiſite; the one a true preſentment of the Surrender in Court, by the ſame perſons into whoſe hands the Surrender was made; the other is an Admittance of the Lord, according to the effect and tenor both of the Surrender and preſentment.

But now more particularly of every one of them apart, and firſt of a Surrender.

Sect. XXXIX.

THis word Surrender, is *vocabulum artis*, and therefore where a Surrender is needfull, if this one word be wanting, all other words, used in ordinary coveiances, are uneffectuall and insufficient to convey any Copyhold estate, for if a Copyholder come into Court, and offer to passe his Copyhold by word of grant, of gift, of bargaine, or sale, or such like, I doubt he will faile of his purpose, for as he is tyed to a singular forme of assurance, so is he restrained to peculiar words in his assurance.

Surrenders are made in severall sorts according to the severall customes of Manors.

In some Manors, where a Copyholder surrendereth his Copyhold, he useth to hold a little rod in his hand, which he delivereth to the Steward or Bayliffe, according to the Custome of the Manor, to deliver it over to the party to whose use the Surrender was made in the name of Seisin,

Seisin, and from thence they are called Tenants by the Verge.

In some Manors, in stead of a wand, a straw is used, and in other Manors a glove is used, *Et consuetudo loci semper est observanda.*

A Surrender (where by a subsequent Admittance the Grant is to receive his perfection and confirmation) is rather a manifesting of the Grantors intention than of passing away any interest in the possession: for till Admitance, the Lord taketh notice of the Grantor as Tenant, and he shall receive the profits of the Land to his owne use, and shall discharge all Services due to the Lord, but yet the interest is in him, but *secundum quid*, and not absolutely; for he cannot passe away the Land to any other, or make it subject to any other incumbrance than it was subject to at the time of the Surrender, neither in the Grantee is any manner of interest invested before admittance; for if hee enter, he is a trespasser, and punishable in trespasse; and if he surrender to the use of another, this Surrender is meerely voide, and by no matter,

ex post facto, can be confirmed; for though the first Surrender be executed before the second; so that at the time of the Admittance of him, to whose use the second Surrender was made, his Surrenderer hath a sufficient interest as absolute owner; yet because at the time of the Surrender, he had but a possibility of an interest; therefore the subsequent admittance, cannot make this Act good, which was void *ab initio*: but though the Grantee hath but a possibilitie upon the Surrender, yet this is such a possibility, as is accompanied with a certainty, for the Grantee cannot possibly be deluded, or defrauded of the effect of his Surrender, and the fruits of his Grantee: for if the Lord refuse to admit him, he is compellable to doe it by a *Sub pena* in the Chancery, and the Grantors hands are ever bound from the disposing of the Land any other way, and his mouth ever stopped from revoaking, or countermanding his Surrender. But peradventure, if a Copyholder languishing in extremity, Surrendereth out of Court, to the use of his

Coſin, in conſideration of conſanguinitie, or to the uſe of his ſonne, in conſideration of naturall love and affection, and after, recovereth his health before preſentment, this Surrender is recoverable, or countermandable: but if it be granted upon valuable conſideration; as for the diſcharge of debts, or for a ſumme of money paid, though it be made out of Court, yet it is as binding as any Surrender whatſoever made in Court. And thus much of a Surrender; a word of a Preſentment.

Sec. XL.

THe Preſentment by the generall Cuſtomes of Manors, is to be made at the next Court day, immediately after the ſurrender: but by ſpeciall Cuſtome, in ſome places, it will ſerve at the ſecond or third Court. And it is to be made by the ſame perſons that took the ſurrender, and in all points materiall, according to the true Tenure of the Surrender. And therefore if the Surrender be con-

conditionall, and the Presentment be absolute, both the Surrender, Presentment and Admittance thereupon are wholly voide.

But if the Conditionall Surrender be presented, and the Steward in entring of it, omitteth the Condition; yet upon sufficient proofe made in Court, the Surrender shall not be avoided, but the Roll amended, and this shall be no conclusion to the partie, to plead or give in evidence of the truth of the matter.

If I surrender out of Court, and die before Presentment; if Presentment be made after my death, according to the Custome, this is sufficient; so if hee, to whose use the Surrender is made, dieth before Presentment, yet upon Presentment made after his death, according to the Custome, his Heire shall be admitted: and so, if I Surrender out of Court, to the use of one for life, the Remdrour, and the Lessee for life dieth before Presentment, yet upon Presentment made, he in the remainder shall be admitted. And so, if I Surrender to two joyntly, and one dieth before

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Preſentment, the other ſhall be admitted to the whole. The ſame law is, if thoſe into whoſe hands the Surrender is made, die before Preſentment, upon ſufficient proofe in Court, that ſuch a Surrender was made, the Lord ſhall be compelled to admit accordingly; and if the Steward, the Bailiffe, or the Tenants, into whoſe hands the Surrender is made, refuſe to preſent, upon a Petition, or a Bill exhibited in the Lords Court; the party grieved ſhall finde remedy. But if the Lord will not doe him right, he may both ſue the Lord, and them that took the Surrender, in the Chancery, and ſhall there finde reliefe. Thus much of Preſentments. A word of Admittance.

Sec. XLI.

ADmittances are threefold:

1. An Admittance upon a voluntary Grant.
2. An Admittance upon Surrender.
3. An Admittance upon a Diſcent.

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In voluntary admittances the Lord is an inſtrument; for though it is in his power to keep the land in his own hand; or to diſpoſe of it at his pleaſure and to that intent may be reputed as abſolute owner, yet becauſe in diſpoſing of it, he is bound to obſerve the Cuſtome preciſely in every point, and can neither in Eſtate nor Tenure bring in any aleration, in this reſpect the law accounts him Cuſtomes inſtrument. If the Cuſtome doth warrant an eſtate onely, *Durante viduitate*, and the Lord admits for Life; this ſhall not binde his heire or ſucceſſor, becauſe cuſtome hath not ſufficiently confirmed it. So if the Lord faile in reſerving *verum & antiquum redditum*; as if he reſerveth ten ſhillings, where the uſuall rent cuſtomably reſerved, is twenty ſhillings: this may be a meanes to avoid the admittance, and the law is very ſtrict in this point of reſervation: for though the ancient accuſtomable rent be reſerved according to the quantity; yet if the quality of the rent be altered, the heire may avoid this Grant: for if the ancient rent from time to time

hath been twenty ſhillings in Gold & the Lord reſerveth it in Silver; this variance of the quality of the rent is in force to deſtroy the Grant: ſo if the ancient rent hath been accuſtomably paid at foure Feaſts in the yeare, and the Lord reſerveth it at two Feaſts. So, if two Copyholds Eſcheate to the Lord, the one of which hath been uſually demiſed for twenty ſhillings rent, the other for tenne ſhillings rent, and he granteth them both by one Copy, for one rent of thirty ſhilling, this is not good; and ſo if a copihold of three acres Eſcheates, which hath been ever granted for three ſhillings rent, and the Lord granteth one Acre, and reſerveth *pro rata*, one ſhillings rent, *verus & antiquus reddit*, is not reſerved: but if a Copyhold of ſix Acres, which hath ever been demiſed for ſix ſhillings rent, Eſcheateth to two Copartners, and one granteth three Acres, reſerving three ſhillings *pro rata*, this is a perfect reſerving.

In Admittances upon ſurrender, the Lord to no intent is reputed as owner, but wholly as an inſtrument, and the party admitted, ſhall be ſubject

to no other charges or incõbrances of the Lord, for he claimes his eſtate under the party that made the ſurrender: and in the plaint, in the nature of a Writ of entry in the *per*, it ſhall be ſuppoſed in the *per* by him, not by the Lord; and as in admittances upon ſurrenders; ſo in admittances upon diſcents, the Lord is uſed as a meer inſtrument, and no manner of intereſt paſſeth out of him, and therefore, neither in the one nor in the other, is any reſpect had unto the quality of his eſtate in the Manor; for whether he hath it by right, or by wrong it is not materiall, theſe admittances ſhall never be called in queſtion for the Lords title, becauſe they are judiciall acts, which every Lord is enjoyned to execute.

Co. 4. fo. 27. b.

Co. 1. 140. b.

Beſides in admittances upon Surrenders, the Lord being accounted nothing but a neceſſary inſtrument, it followeth that he hath a bare Cuſtomary power to admit, *ſecundum formam & effectum ſurſum reddendi*: therefore if there be any variance betwene the Admittance and Surrender either in the perſon, in the eſtate, or in the tennre,

tenure, or in any other collaterall points, the Lord doth only transferre an eſtate according to the Surrender and his authority if it can take ſuch effect. As if I Surrender to the uſe of *I. S.* and the Lord admits *I. N.* this admittance is wholly void; and notwithſtanding this admittance the Lord may afterwards admit *I. S.* according to the effect of his authority: but had he admitted *I. S.* and *I. N.* joyntly, then the admittance had been void for the one, and good for the other, like the Caſe of a Deviſe: where a Deviſe of a terme is made to *I. S.* and the Executors agree, that *I. S.* and *I. N.* ſhall have this terme; this conſent is void to *I. N.* for after the conſent of the Executor, *I. N.* is in by the Deviſe. *Co. 4. fo. 28.* Yet ſome are of opinion, that if I ſurrender to the uſe of *I. S.* in Fee, and the Lord admits *I. S.* together with his eldeſt ſonne and heire apparent, that this is an eſtate by Eſtoppell to *I. S.* and that he ſhall only claime joincly with his ſonne, becauſe hee might have refuſed an admittance in this manner; but I can hardly be brought, to think that this admittance

giving

giving a present interest in the sonne, who by surrender was to have no interest till the death of his father, should be any such estopell.

If I Surrender to the use of *I. S.* for life, and the Lord admits him in Fee, an estate for life onely passeth. So if I surrender without mentioning any certaine estate, because by implication of the law, estate for life only passeth, though the Lord admit in Fee, no more doth passe, than the implication of law will warrant. If I Surrender with the reservation of a rent, and the Lord admits not, reserving any rent, or reserving a lesse rent than I reserved upon the surrender, this admittance is wholly void: but if the Lord reserveth a greater rent, then is the reservation void, onely for the surplusage, and the admittance so far currant as it agreeth with my surrender. If I surrender upon Condition, and the Lord omits the Condition, the admittance is wholly void; but if my surrender be absolute, and the Lords admittance be conditionall, the Condition is void, but the admittance in all points else is good.

Co. 4. fo. 29.

Co. 4. fo. 25.

The reasons of these diversities are

are theſe, where an Authoritie is given to any one to execute any Act, and he executeth it contrary to the effect of his authority, this is utterly voide; but if he executeth his authoritie, and withall goeth beyond the limits of his warrant, this is voide for that part only, wherein he exceedeth his authoritie. Theſe Admittances upon Surrender, differ from Admittances upon Diſcents in this; that in Admittances upon Surrender, nothing is veſted in the Grantee before Admittance, no more than in the Voluntary Admittances; but in admittances upon Diſcents, the heire is Tenant by Copy immediately upon the death of his Anceſtor, not to all intents and purpoſes; for peradventure he cannot be ſworne of the homage before, neither can he maintaine a plaint in the nature of an Aſſize in the Lords Court before, becauſe till then he is not compleate Tenant to the Lord, no further forth then the Lord pleaſeth to allow him for his Tenant. And therefore, if there be Grandfather, Father, and Sonne; and the Grandfather is admitted, and dyeth,

the Father entreth, and dyeth before admittance, the Sonne shall have plaint in the nature of a Writ of Ayell, and not an Assize of *Mort d' auncestor*, so that to all intents and purposes, the Heire, till Admittance, is not compleat Tenant; yet to most intents, especially as to strangers, the Law taketh notice of him, as of a perfect Tenant of the land instantly upon the death of his Auncestor, for he may enter into the Land, before Admittance, take the profits, punish any trespasse done upon the ground, Surrender into the hands of the Lord, to whose use he pleaseth, satisfying the Lord his fine, due upon the Discent, and by estoppell, hee may prejudice himselfe of his inheritance, for if an Estrange come and Surrender to the use of him and his Wife, before Admittance, he shall ever claime joyntly with his Wife, and never be taken as sole Tenant, and the Lord may avow upon him before admittance, for any arrerages of Rent, or other Services: and last of all, upon an actuall possession there shall be *possessio fratris*, before admittance, for if a Co-

Co.4.fo.23.

Co.4.fo.22.b.

py-

pyholder in Fee have iſſue, a Sonne and a Daughter by one Venter, and a Sonne by another Venter, and dyeth ſeiſed, and his Sonne by the firſt Venter, entreth into the Land, and dyeth before Admittance, the Daughter ſhall inherit, as Heire to her brother; and not the Sonne by the ſecond Venter, as Heire to his Father: and many times the poſſeſſion of a Guardian, or a Tearmer, without an actuall entry, or any claime made by the Heire, will make a *poſſeſſio fratris*. As if a Copyholder in Fee, having iſſue, a Sonne or a Daughter, by one Venter, and a Sonne by another Venter, by licence of the Lord, maketh a Leaſe for yeers, and dyeth, and the Sonne of the firſt Venter dyeth, before the expiration of the Terme, being neither admitted, nor having made any actuall entry, or any claime. Yet this poſſeſſion of the Leſſee is ſufficient, and the Reverſion ſhall diſcend to the Daughter of the firſt Venter, and not to the Sonne of the ſecond Venter. But if the Leaſe had beene determined, the Sonne living, by the firſt Venter, and afterwards he had

dyed before any actuall entry made, the Law would have fallen out otherwise, because there was a time, when he might have lawfully entered; therefore, where some have imagined that nothing should be invested in the Heire before Admittance; because every Admittance of an Heire, upon a Discent, amounteth to a grant, and so may be pleaded, they are in an error, for though it be true, that after Admittance, the Heire may in pleading alledge this as a Grant, and that hath beene allowed, to avoide the inconveniences that otherwise should ensue; For if the Copyholder should be driven in pleading, to shew the first Grant, either that being made before the memory of man, is not pleadable, or since the memory of man, and then Custome failes, for this reason, the law hath allowed a Copyholder, in pleading to alledge any Admittance aswell upon a Discent, as upon a Surrender, as a Grant: and yet he may, if he will, alledge the admittance of his Ancestors, as a Grant, and shew the Discent to him, and that he entred, and well, without any Admittance;

tance; but the Heire cannot pleade that his Anceſtor was ſeiſed in Fee, at the will of the Lord, by Copy of Court Roll, of ſuch a Manor, according to the Cuſtome of the Manor, and that he dyed ſeiſed, and that the Copyhold diſcended upon him, becauſe in truth ſuch an intereſt is but a particular intereſt at will, in judgement of Law, although it be diſcendable by Cuſtome.

So that I conclude, that an admittance is principally for the benefit of the Lord, to intitle him to his Fyne, and not much neceſſary for ſtrengthning of the Heires title.

Then will ſome ſay, if the benefit which the Heire ſhall receive by the Admittance, will not countervaile the charges of the Fyne, he will never come in, and take up his Copyhold in Court, and ſo defeate the Lord of his Fine: I aſſure my ſelf, if it were in the election of the Heire to be admitted, or not to be admitted, he would be beſt contented without admittance, but the Cuſtome in every Manor is compulſary in this point, for either upon paine of forfeiture of

their Copyhold, or of incurring ſome great penalty, the Heires of Copyholders are inforced in every Manor to come into Court, and be admitted according to the Cuſtome within a ſhort time after notice given of their Anceſtors deceaſe. And thus much of the Grant it ſelfe. A word of the things granted.

SEC. XLII.

THings that lye not in Tenure, are not Grantable by Copy. As Rents, Bailiwickes, Stewardſhips, Common in groſſe, Advowſions in groſſe, and ſuch like. All which are incorporate Hereditaments, and therefore no Rent can iſſue out of them, neither can they be held by any manner of Service, but an Advowſion appendant, a Common appendant, or a Faire appendant may paſſe by Copy, by reaſon of the principall thing to which they are appendant, and generally what things ſoever are parcell of the Manor, and are of perpetuity, may be granted by Copy, according to the Cuſtome, as Under-woods growing up-

upon the Manor, being things of continuance (for after they are cut, they will grow againe, *ex ſtipitibus*) may well be granted by Copy; and ſo of herbage or any other profit of the Manor; and ſometime of the Grant of a Copyhold, things ſhall paſſe that are ſevered from the Manor. As if the Lord of a Manor grant his Manor for yeers, *except. boſc. & ſuboſc.* growing in certaine Copyhold ground, and the Leſſee by his Steward granteth a Copyhold, within which Manor there is a Cuſtome, that every Copyholder may take within his Copyhold Woods, and Under-woods, growing upon the ground for his neceſſary fuel, notwithſtanding this exception in the Leaſe of the Manor, the Copyholder may cut downe the Woods or Underwoods, according to the Cuſtome, though by exception ſevered from the Manor, for though the Leſſee of the Manor, in reſpect of the exception, could not meddle with the Woods or Uunder-woods, and ſo it might ſeeme, *prima facie*, very probable that the Copyholder, comming in by the voluntary admittance of *Co. 4. fo. 31.*

the Leſſee, ſhould have no more Authority nor intereſt then the Leſſee himſelfe had; yet becauſe the Copyholder being once in by Cuſtome, and ſo his title being grounded upon cuſtome is paramount the exception; Therefore, the exception in the leaſe of the Manor, though preceding the Grant of the Copyhold, cannot any way touch or prejudice the Copyholder. And ſo, if there be a Cuſtome, within a Manor that Copyholders have uſed to have Common in the Waſtes of the Lord, and the Lord granteth away his Waſtes, and after granteth a Copyhold, the Copyholder ſhall have common, but in alledging the Cuſtome, he ſhall not ſay, *Quod infra Maner. præd. talis habetur conſuetudo.* but that till ſuch a time, *viz.* before the ſeverance, *talis habebatur & toto tempore, &c. conſuetudo*, and then ſhew the ſeverance. If there be an incertainty in the things granted, the Grant is not therefore inſufficient; for by the election of him that is the firſt agent, it may be made certain.

As if I grant by Copy, twenty loads of Haſell, or twenty loads of Maple

in

in the dis-junctive to be cut downe, and taken by the Grantee in my Manor of Dale, there the Grantee hath election to make choyce of which he pleaseth, becauſe he is to perform the firſt Act of cutting down, and taking them, but if I am to cut them down, and deliver them to the Grantee, then have I the election, & obſerve this difference touching this point of electiō. *Co.2.fo.37.a. Co.4.fo.27.*

If a Grant be made in the dis-junctive of two annuall things, and things of continuance; if the election belong to the Grantor, and he faileth at the day to make election, yet his election is not determined, but continueth the ſame after the day, that it was before the day, but otherwiſe it is, where things are not annuall, but are to be performed *unica vice tantum.*

Therefore if the Lord of a Manor granteth by copy, twenty trees growing upon Black acre, or White acre, to be cut down yearly by himſelfe, and to be delivered to the Grantee at ſuch a day, though the Grantor faile at his day to make his election, yet his election is not gone, becauſe the things granted are annuall, but had theſe

trees

trees been to be delivered to the Grantee once onely, and not yearly, then by the failor of the Grantor at the day, the election is devolved to the Grantee.

Sec. XLIII.

AND thus much of the thing granted, a word of the Instruments, through whose hands, as through Conduit-pipes, the lands are *gradatim*, conveyed to the purchasor, I will not speak of those men, that are used as Instruments by speciall Custome to present in Court, Surrenders taken out of Court. These I have sufficiently spoken of already. I will here point only at these persons; that by the generall Custome of every Manor, are imployed as necessary Instruments in Customary admittances, and will cursarily examine the extents of their authorities, and the quality of their offices.

The persons I ayme at are these;

1 The Lord.

2 The Steward.

3 The Under-Steward.

Sec.

Sec. XLIV.

THE Lords Authority conſiſteth chiefely in theſe foure thing.

1 In puniſhing offences, and miſdemeanors, committed within his precincts, as not performance of Cuſtomes, breach of by-lawes, not diſcharging of duties, and ſuch like.

2 In deciding controverſies ariſing about the title of Copyhold land, lying within his bounds; and when he ſitteth as Judge in Court, to end debates of this nature, he is not tied to the ſtrict forme of the common law, for he is a Chancellor in his Court, and may redreſſe matters in Conſcience upon Bill exhibited, where the common law will afford no remedy in the ſame kinde, as to inſiſt in one familiar example.

If I Surrender a Copyhold to the uſe of a ſtranger, upon confidence, that ſuch debts being by me diſcharged, he ſhall Surrender backe this Copyhold; I upon diſcharge of the debts demand a Surrender, and he refuſeth,

ſuſeth, at the common law I were left remedileſſe, this being a bare confidence, and no Condition, but upon Bill exhibited in the Lords Court I ſhall be relieved, for the Lord upon proofe of the matter may ſeize the Copyhold, and readmit me, accor to the effect of the Confidence.

3 In admitting Copyhold. And in this Cuſtomary power of admittance, the Lord doth ſomewhat outſtrippe the Steward, for the Lord may make either admittances upon voluntary Grants, admittances upon Surrenders, admittances upon diſcents, in any place where he pleaſeth out of the Manor, but ſo cannot the Steward: and in giving licence to Copyholders to aliene by deed, and in this point of licence, the Lords authority doth exceed the Stewards authority; for though ſome are of opinion, that it is both uſuall and warrantable, for the Steward of a Manor in abſence of his Lord, to licence a Copyholder in full Court to aliene by Deed, for as many yeares as he ſhall think good, becauſe he is Jugde in the Court; and beſides, the entry of it in

Co. 4.31. a.

the

the Court Role is in this manner, *Ad hanc curiam. I. S. petit Licentiam Domini dimittendi, &c. Cui Dominus licentiam dat, &c.* and therefore this licence being granted in the Lords name in full Court, the Lord shall never enter for a forfeiture, but shall ever be estopped, to say the contrary, but that he did give licence, yet (under reformation be it spoken) I must mistrust the truth of this opinion; for this power of licensing Copyholds to alien by Deed, is not Customary, for then it were as proper to the Steward as to the Lord; but it is a power of interest annexed to the person of the Lord, in respect of his estate in the Manor, and not in any other Collaterall respect; and therefore if the Steward having a bare authority to execute what the Custome of the Manor doth warrant, *sans doubt*, he cannot, *virtute officii*, grant any unwarrantable licence to aliene by deed, no more than to commit waste: for the one act, as well as the other, tendeth to the breach of custome, and both of them without a sufficient allowance, amounts to the forfeiture of a Copy-

hold,

hold, but by expresse words in the Stewards Patent, or by speciall authority given him by the Lord, or by some particular Custome warranting the same, the Steward may in Court lawfully licence Copyholders, to aliene as well as the Lord may. And thus much of the Lord.

Sec. XLV.

STeward, is derived from those two words, *Stede* and *Ward*; and so any that doth supply anothers place or that is in any imployment deputy to another, may according to the true sense of the word bee termed a Steward, as the high Steward of *England*, because the King appointeth him in divers matters to exercise his place: and so the under Sheriffe may be termed by the name of the Sheriffes Steward, being his Deputy, and how properly the Lords Steward is so named, any man may judge by this, that the whole authority of the Steward is derived from the Lord, as from the head; & not only so, but withall he representeth the Lords person in many im-

Imployments, for in the Lords absence he sitteth as Judge in Court to punish offences, determine controversies, redresse injuries, and the like, and further, somethings he performeth in the Lords name, and not in his own name, for if the Steward admitteth any Copyholder, or by speciall Authority, or particular Custome, licenceth a Copyholder to aliene, this admittance and licence shall be made in the Lords name, and the entry in the Court Role, shall be, *Quod Dominus per Senescallum admisit, & licentiavit*, and not that the Steward did admit, or licence; therefore sithence the Steward hath this measure of authority and confidence commited unto him, the Lord shall doe very well to be very carefull in making choise of his Steward; for if he bee defective in any one of these three qualities, Knowledge, Trust, or Diligence, the Lord may be much prejudiced and damnified; therefore *Fleta* wisely giveth the Lord this counsell.

Providetur sibi Dominus de Senescallo circumspecto & fideli & pacifico & mo-

tudeſto, qui in legibus conſuetudinibus
que provincie Domini ſui in omnibus
tueri affectet, quiſque Ballivos Domini
in ſuis erroribus & ambiguis ſciat in-
ſtruere & docere, quique egenis par-
cere, & nec prece vel pretio velit à tramite juſtitie deviare & perverſe judi-
care.

Theſe Stewards for the moſt part, have Patents for their Offices, yet they may be retained by Paroll, and this reteiner by Paroll, is as effectuall in all points before diſcharge, as the moſt effectuall inſtitution by Patent: for a Steward thus retained, may take Surrender out of Court, or make voluntary Admittances, or any other Act incident to the office of a Steward, as well as a Steward inſtituted by Patent. But in the Kings Manors, a Steward cannot be retained by Paroll by the mouth of the Auditor or Receiver; but to make the Stewards authoritie currant, eſpecially to make voluntary admittances; it is neceſſary he have a Patent, and then, by vertue of his Patent, without any ſpeciall Authority, or particular Cuſtome, hee may juſtifie the

Co.4.fo.30.b.

Co.4.fol.30.a.

the making of any voluntary admittance, upon Eſcheates or forfeitures, or the doing of any Act belonging to his Office; but though he may *Ex officio*, doe thoſe things without ſpeciall warrant, yet dutie bindes him before he make any voluntary admittance to informe the Lord Treaſurer of *England*, the Chancellor, and Barons of the Exchequer, or any of them for his better direction, and the Kings better benefit: the Law is not very curious in examining the imperfections of the Stewards perſon; nor the unlawfulneſſe of his authoritie, for be he an Infant, or *non compos mentis*, an Idiot, or Lunatique, an Out-law, or an Excommunicate; yet what things ſoever he performeth, as incident to his place, can never be avoided for any ſuch diſabilitie, becauſe he performeth them as a Judge, or at leaſt as Cuſtomes Inſtrument: and for his authority, though it prove but counterfeit, if it come to exact triall; yet if in appearance or outward ſhew, it ſeemeth currant, that is ſufficient. As if I grant the Stewardſhip of my Manor of Dale by Pa-

tent, and in the Patentees abſence, a ſtranger by my appointment keepeth Court, this is authenticall. If a grant of a Stewardſhip be made to one, and for ſome fault or defect in the Grant, it is avoidable, yet Courts kept by him before the avoidance, ſhall ſtand in force: and whatſoever he did as Steward, are ever unavoidable. As if a Corporation retaineth a Steward by Paroll, and hee keepeth a Court, puniſheth offences, decideth controverſies, taketh Surrenders, maketh admittances, either upon Surrenders or diſcents: theſe Acts being judiciall ſhall ever ſtand for currant, though his authoritie be grounded upon a wrong foundation; for a Corporation cannot inſtitute any ſuch Officer, without writing. And ſo if the Kings Auditor or Receiver, retaine a Steward by Paroll, he may lawfully execute any judiciall Act: but things which he performeth, as Cuſtomes inſtrument, not as Judge, ſuch as are voluntary admittances, neither in the retainer by the Corporation, or in this retainer by the Kings Officers, ſhall any whit binde: but if a ſtranger with-

without the appointment of the Lord, or consent of the right Steward, or without any colour of authoritie, will of his owne head, come into a Manor, and keep a Court; it seemeth that the performance of any judiciall duty, or the executing of any act whatsoever will not be warranted, especially if the Court be kept without warning given to the Bayliffe by precept, according to the Custome.

The Office of a Steward may be forfeit three maner of wayes.

1 By Abuser.
2 By *Non user.*
3 By Refuser.

By abuser, As if the Steward burne the Court Rolles, or if he taketh a bribe to winke at any offence, or use partiality in any cause depending before him, these and the like abuses will make him subject to a forfeiture.

By *Non user*, As if the Stewerd by his Patent, being tyed to keepe Court at certaine times of the yeere, without request to be made by the Lord if he faileth, and by his failer, the Lord receive any prejudice, this is a

forfeiture. But if the Lord be not damnified, then this *non user* is no forfeiture. As if a Parker attends not for the space of three or foure dayes, and no prejudice or damage happeneth in the interim, this is no forfeiture: and in Offices, which concerne the administration of Justice, or the Commonwealth, the Law is more strict then in the Offices which concerne private men: for where an officer *ex officio*, or of necessitie ought to attend for the administration of Justice, or for the good of the Commonwealth, there *Non user*, or non attender in Court, is a forfeiture, though this be prejudiciall to no man, as the office of the Chamberlaine in the Exchequer, a Protonotary, Clark of the Warrants, *Exigentur Filizar*, or the like in the Common Pleas, because the attendance of these and the like officers, is of necessitie for the administration of Justice, so the attendance of the Clarke of the Market, is of necessity for the good of the Common wealth, and so is holding of the Sheriffes turne, &c.

By Refuser, the office of a Steward may

may be thus forfeited, if the Steward be tyed in his Patent to keepe Court upon a demand or requeſt, to be made by the Lord, if the Lord demandeth or requeſteth him to keep a Court, and he faileth; this is a forfeiture, though the Lord be thereby nothing damnifyed. And thus much of the Steward.

Sec. XLVI.

THe under Steward is the Stewards deputy, and ſometimes appointed by writing, ſometimes by Paroll, and the extent of his Authoritie, is as great as the Stewards own Authoritie, and his office conſiſteth in performance of the ſelfe ſame duties that the high Steward himſelf is to performe, onely in this point the power of the Steward goeth beyond the power of the under-ſteward; that the Steward can make an admittance out of Court, and it ſhall ſtand good if entry be made in the Court Roll, that he that is admitted, hath paid his fine, and hath done fealty; but the un-

der-Steward, though he may take a Surrender out of the Court, yet he cannot make any Admittance out of Court, without eſpeciall Authoritie or particular Cuſtome.

Some have thought, that an under-ſteward may be made without ſpeciall words in the Stewards Patent, authorizing him to make a Deputy: but ſurely, ſince it is an office of knowledge, truſt and diſcretion, it cannot, unleſſe it be in caſes of neceſſitie. As if an office of Stewardſhip deſcend unto an Infant, hee may make a Deputy, becauſe the Law preſumeth he is himſelfe uncapable to execute it, ſo if it be granted to an Earle in reſpect of th'exility of the Office in a baſe Court, and of the dignitie of the perſon, who is *Præpoſitus Comitatus*, and had in ancient time the charge and cuſtody of the whole ſhire, whoſe attendance the Law intendeth to be moſt neceſſary upon the King and the Common-wealth, therefore it is implyed in Law for the conveniencie, that he may make a Deputy, for whom he ought to anſwere. This is one obſervation touching underſte-

wards,

wards, in admittances made by underſtewards, as well as in admittances made by the Stewards themſelves, it is good order to expreſſe in the Copy, and in the Court Roll, the name of the underſteward, or of the Steward, becauſe in pleading any Admittance, a man muſt ſay that he was admitted by ſuch a one underſteward or Steward, naming his name. And this ſhall ſuffice touching the manner and means of granting Copyholds: Suffer me now in the fourth place, to point at the ſeveral eſtates of Copyholders, together with their ſeverall qualities incident to their ſeverall eſtates.

Sec. XLVII.

All eſtates whatſoever may be reduced to one of theſe three heads.

1 Inheritance.
2 Francktenant.
3 Chattells.

All Inheritances are of two ſorts, either Fee ſimples, or Fee tailes.

Of Fee ſimples, ſome are de-

der-Steward, though he may take a Surrender out of the Court, yet he cannot make any Admittance out of Court, without especiall Authoritie or particular Custome.

Some have thought, that an under-steward may be made without speciall words in the Stewards Patent, authorizing him to make a Deputy: but surely, since it is an office of knowledge, trust and discretion, it cannot, unlesse it be in cases of necessitie. As if an office of Stewardship descend unto an Infant, hee may make a Deputy, because the Law presumeth he is himselfe uncapable to execute it, so if it be granted to an Earle in respect of th'exility of the Office in a base Court, and of the dignitie of the person, who is *Præpositus Comitatus*, and had in ancient time the charge and custody of the whole shire, whose attendance the Law intendeth to be most necessary upon the King and the Common-wealth, therefore it is implyed in Law for the conveniencie, that he may make a Deputy, for whom he ought to answere. This is one observation touching under-stewards,

wards, in admittances made by under-ſtewards, as well as in admittances made by the Stewards themſelves, it is good order to expreſſe in the Copy, and in the Court Roll, the name of the underſteward, or of the Steward, becauſe in pleading any Admittance, a man muſt ſay that he was admitted by ſuch a one underſteward or Steward, naming his name. And this ſhall ſuffice touching the manner and means of granting Copyholds: Suffer me now in the fourth place, to point at the ſeveral eſtates of Copyholders, together with their ſeverall qualities incident to their ſeverall eſtates.

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Of Fee ſimples, ſome are de-

terminable, ſome are undeterminable.

Determinable, as where Land is given to a man and his heires, for ſo long time as *Pauls* ſteeple ſhall ſtand.

Undeterminable, as where Land is given to a man and his heires, without farther limitation.

Of Fee tailes, ſome are generall, ſome are ſpeciall.

Generall, as where Land is given to a man and the heires of his body, or heires males, or females of his body.

Speciall, as where Land is given to a man, and the heires, males or females, which he ſhall beget of ſuch a woman.

All Franketenants are of two ſorts, either created by the act of the party, or by the act of the Law.

Of Francketenants created by the act of the party, ſome are determinable by death, ſome by collaterall meanes.

By death, as eſtates granted during the life of the Grantor, of the Grantee, or of a Stranger.

By

By collaterall meanes, as eſtates granted *quia diu fuerit innupta*, to a Widdow, *quia diu remanſerit vidua*, or to a Miniſter, *quamdiu Sacerdotium exercuerit*.

Of Francke tenants created by the act of the Law, ſome are Francketenants *ſimpliciter*, ſome *ſecundum quid ſimpliciter*, as the eſtates of a tenant in Dower, of a tenant by the courteſie, of an occupant, a tenant in taile, after poſibility of iſſue extinct, *ſecundum quid*, as the eſtates of a Tenant by Statute Merchant, *Stat. Staple & Elegit*; who though they are to have the Land, but for ſo many yeeres as will give a plenary ſatisfaction to their debts, yet by the *Stat.* of *Weſtm.* 2. they may mainetaine an Aſſize, which no other Tenant having but a Chattell can have.

All Chattells are either certaine, or incertaine: Of Chattells certaine, ſome are in themſelves certaine, ſome are made certaine by relation to a certainty. Certaine in themſelves, as where Lands are granted for 20. 30. or 40. yeers. Certaine by relation to a certainty, as where Land

is

is granted for ſo many yeares as *I. S.* hath acres of Land.

Of incertaine Chattels, ſome are incertain in their commencement, ſome incertaine in their determination.

In their commencement, as where a Guardian hath an eſtate during the minority of the heire, all theſe eſtates either by generall or by the particular cuſtomes of Manors, are of Copyholds aſwell as of Feeholds, in what manner ſoever an eſtate in Fee ſimple is warranted by the cuſtome, moſt inferior eſtates are by implication likewiſe warranted. All Frank tenants created by the act of the party, the eſtate of an occupant, and all Chattells whatſoever, without any other particular cuſtome, are hereby warranted.

Ca.4.f.23.

But the law is otherwiſe, of eſtates in Dower by the curteſie, by Statute Merchant, Statute Staple, or Elegit, for as long as ſuch a Copyhold, by the cuſtome of the Manor grantable in Fee ſimple, continueth in the Copyholders hands, it is not lyable to any of theſe eſtates, but if once it com-

Co.4.fo.22.

commeth to the Lord by Eſcheate, Forfeiture, or by other meanes, ſo long as it remaineth reunited to the Manor, it is in the nature of a Freehold, and ſhall bee ſubject to the charges and incumbrances, as land at the common law, and howſoever by implication theſe eſtates are not allowed in Copyholds, continuing in the Copyhold poſſeſſion, yet by particular cuſtome the Wife may be Tenant in Dower, the Husband Tenant by the curteſie, a ſtranger Tenant by Statute Merchant, Statute Staple, or Elegit, of a Copyhold, reſting in the Copyhold, aſwell as if it reſted in the Lord; whether an eſtate tayle, or an eſtate tayle after poſſibility of iſſue extinct, which hath a neceſſary depending upon an eſtate tayle, may by any particular cuſtome be allowed, that I may diſpute, but cannot determine; for it is *vexata queſtio*, much controverted; but nothing concluded, I will briefely touch the reaſons alledged on both ſides. They which are againſt the validity of Intailes by ſpeciall cuſtome, doe chiefely urge theſe two reaſons, that no eſtates tayles

tayles were before the *Stat. de donis conditionalibus*, but all Inheritances were Fees conditionall, and the Statute being made 13. E. 1. which is within the memory of man, it cannot be that any Customes have any Commencement, since the Statute; for then a custome might begin within time of memory, which is altogether repugnant to the rules of custome.

Two great inconveniences would ensue, if a Copyholder might be Intailed by speciall custome, because neither fine nor common recovery can barre it; so that he hath such an estate, that he cannot of himselfe, without the assent of the Lord, dispose of it, either for the payment of his debts, for the advancement of his wife, or preferment of his yonger sonnes.

SEC. XLVIII.

THE maine reasons insisted upon in defence of intayling Copyholds are these.

1 In divers Manors they have been from time to time, not only reputed as

as Tenants in tayle, but in every mans mouth termed by that name.

2 A *Formedon* in the *Descender* lyeth of a Copyholder, which Writ none can bring but Tenant in tayle.

3 A remainder limitted upon such an estate in such Manors hath been allowed, and therefore is no Fee conditionall; for upon a Fee, whether absolute or conditionall, a render can by no meanes depend.

4 It is a common usage there by a Recovery to dock intailes of Copyhold, or to defeate these estates by presentment, that the Copyholder hath committed a forfeiture, and so the Lord to seize, and to surrender it to the purchaser; and therefore there is not that inconvenience which is supposed in the Copyhold, *scilicet*, want of power to dispose of such an estate without the Lords consent.

5 Much inconvenience would depend upon this if Copyholds might not be intayled, for it would tend to the subversion and destruction of many mens estates; which from time to time they have enjoyed without contradiction,

tradiction, and therefore for the quiet of the common wealth how neceſſary it is that Copyholds ſhould be intayled, let any man judge.

Thus much of the ſeverall eſtates of the Copyhold. A word of the ſeverall qualities incident to ſeverall eſtates.

Sec. XLIX.

WHat qualities ſoever are neceſſarily incident to eſtates at the common law, are incident to eſtates by cuſtome. In illuſtrating this, I will confine my ſelfe to the diſcuſſing of theſe two points.

1 What words will create Copyholds of inheritance, and what Copyholds of Frank Tenant.

2 How Copyholds of inheritance ſhall deſcend.

Touching their creation, Copyholds of inheritance, and Copyholds of Frank Tenement, are created by the ſame words that inheritance and Frank Tenement at the common law are created by.

Co. 4. fo. 29.

If a Copyhold be granted to a man, and

and to his heires males, or heires females.

If to a man *& ſanguini ſuo hereditabili.*

If to a Deane and Chapter, or to a Major and commonalty, without any expreſſe eſtate, or without a limitation of ſome inferior eſtate. In all theſe Grants, a perfect eſtate in Fee paſſeth.

And ſo peradventure if I ſurrender a Copyhold to a man & his heires, and he reciting this eſtate, reſurrendreth in the ſame manner to me, that I ſurrendred to him, not making any mention of my heire, yet this recitall ſeemeth ſufficient to paſſe a good Fee ſimple.

So, if I ſurrender unto you as large an eſtate, as *I. S.* hath in his Manor of *D.* and he hath a Fee ſimple in his Manor, it is ſomewhat probable, that an eſtate in Fee ſimple ſhould paſſe, by reaſon of his relation without the word Heires.

If a Copyhold be Surrendred to a man, *& ſemini ſuo hereditabili de corpore*, or to a man, *& heredibus ex ipſo procreatis*, or to a man in Frank Marriage

age with his wife; In these Grants an estate tayle passeth in the first, without the word heires, in the second, without the body; in the third without either.

If the King by his Steward granteth a Copyhold to a man, and to his heires males or his females, no Fee simple passeth, because the Lord never intended to passe such an estate.

If a Copyhold be granted to an Abbot, and to his heires, an estate for life only passeth.

So if I Grant a Copyhold to a man in Fee simple, *ac sanguini suo in perpetuum*, or *sibi & assign. suis in perpetuum*; yet the word heires wanting no greater estate than for his life passeth.

The same law is, if a Copyhold be granted to a man, and to his heires, as long as *I. S.* shall live, this is onely an estate, *per autter vie, & a rend.* limitted upon this estate is good.

But if a Copyhold be granted to a man, and to his heires, as long as such a tree shall grow in such a ground this is a good Fee, and a render limitted upon it is void.

If

If a Copyhold be granted to *I. S.* and *I. N. & hæredibus*, they are joynt Tenants for life; and no inheritance passeth unto either, because of the uncertainty for want of this word (*suis*) but if a Copyhold be granted to *I. S.* onely *& hæred.* a good Fee simple passeth without the word *suis*.

If a Copyhold be granted to a man, *& hæredibus*, an estate tayle doth not passe, for want of the words *de corpore*. And if a Copyhold be granted to a man, *& liberis aut puer. suis de corpore*; an estate tayle doth not passe for want of this word (heires) for what estates soever are intayles since the Statute *De donis Conditionalibus*, were fee simples conditionall; but this could be no Fee simple conditionall before the Statute without the word (heires) and therefore no intayle since the Statute. And for the same reason, if a Copyhold be granted to a man, and to the issues males of his body an estate for life onely passeth.

If a Copyhold be granted to a man, without expressing any certain estate

by implication of Law, an eſtate for life onely paſſeth; and if I grant a Copyhold to three, *habendum ſucceſſive*, they are joynt Tenants, unleſſe by ſpeciall Cuſtome the word *ſucceſſive* make their eſtates ſeverall. Thus much touching the creation of Copyhold eſtates.

Sec. L.

THe diſcents of Copyhold of inheritance are guided and directed by the rules of the Common Law, as well as the creation of Copyhold eſtates.

If a Copyholder in Fee-ſimple having iſſue, a ſonne and a daughter by one *venter*, and a ſonne by another *venter*, dieth; and the ſonne by the firſt *venter* entreth and dieth; the Land ſhall diſcend to the daughter, *Quia poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.*

But if a Copyholder in tayle, having iſſue, a ſoune and a daughter by one *venter*, and a ſonne by another *venter*, dieth; and the ſonne by the firſt *venter* entreth

entreth and dieth, the ſonne of the ſecond *venter* ſhall inherit.

If a man having iſſue, a ſonne and a daughter by one *venter*, and a ſonne by another *venter*, the eldeſt ſonne purchaſeth a Copyhold in Fee, and dyeth without iſſue, the daughter ſhall have the Land, not the yonger ſonne, becauſe he is but of the halfe blood to the other.

If a man hath a Copyhold, by diſcent from his mothers ſide, if he die without iſſue, the Land ſhall goe to the heires of the mothers ſide, and ſhall rather eſcheate, than goe to the heires of the fathers ſide; but if I purchaſe a Copyhold, and die without iſſue, the Land ſhall goe to the heires of my Fathers ſide: but if I have no heires by my Fathers ſide, it ſhall goe to the heires of my mothers ſide rather than eſcheate.

If there be Father, Unckle and Sonne, and the ſonne purchaſeth a Copyhold in Fee, and dieth without iſſue, the Uncle ſhall inherite, and not the Father, becauſe an inheritance may lineally diſcend, but not aſcend.

If there be three brothers, and the middle brother purchaseth a Copyhold in Fee, and dieth without issue, the eldest shall inherit, because the worthiest of blood.

If there be two Copartners, or two Tenants in Common of a Copyhold, and one dieth having issue, the issue shall inherit, and not the other by the survivorship; but otherwise it is of two joynt Tenents. Should I give way to my Penne, and write on this Theame till I wanted matter to write on, I should make a large Volume in dilating this one point, therefore I will contract my selfe, intreating you to supply by your private cogitations, what I have either willingly or unwittingly passed over in silence, onely take this caveat by the way.

Though all qualities necessarily incident to estates at the Common Law, are likewise incident to Copyhold estates; yet the Law is not so of collaterall qualities, without speciall Custome; and therefore a Copyhold shall be no assets to the heire.

Co. 4. fo. 22. a.

A discent of a Copyhold, shall not toll

toll an entry. A Surrender made by Tenant in tayle (admit a Copyhold may be intayled) or by a Baron of a Copyhold, which he hath in right of his Wife, ſhall make no diſcontinuance, becauſe theſe are collatterall qualities, and not neceſſarily incident.

Thus much of the ſeverall eſtates of Copyholds, together with their ſeverall qualities incident to their ſeverall eſtates. I come now in the firſt place to examine how Copyholders are to implead, and be impleaded.

Sec. LI.

A Copyholder cannot in any Action reall, or that ſavoreth of the realty, or hath a dependance upon the realty, implead or be impleaded in any other Court, but in the Lords Court, for or concerning his Copyhold, but in Actions that are meerely perſonall, he may ſue or be ſued at the Common Law.

If a Copyholder be ouſted of his

Copyhold by a ſtranger, hee cannot implead him by the Kings Writ, but by Plaint in the Lords Court, and ſhall make proteſtation to proſecute the ſute in the nature of an Aſſize of novell diſſeiſin, of an Aſſize of *Mort D'anceſtor* of a *Formedon* in the Diſcender, Reverſer, or Remainder, or in the nature of any other Writ, as his cauſe ſhall require, and ſhall put in *pleg. de proſequend.*

If a Copyholder be ouſted by the Lord, he cannot maintaine an Aſſize at the Common Law, becauſe he wanteth a Franck-Tenant, but he may have an action of treſpaſſe againſt him at the Common Law; for it is againſt reaſon, that the Lord ſhould be Judge, where he himſelf is a party.

If in a plaint in the Lords Court touching the tytle of a Copyholder, the Lord giveth falſe judgement, hee cannot maintain a writ of falſe judgement, for then he ſhould be reſtored to a Franck-Tenant, where he loſt none.

No Copyholder of baſe Tenure in ancient Demeſne, can maintaine a Writ of *Breit cloſe*, or a Writ of *Monſtra-*

ſtravérunt, but Tenants of Fancke-tenure in ancient demeſne can.

A Copyholder that may cut down Timber trees by Cuſtome, by licence of the Lord, maketh a Leaſe for yeers, the Leſſee cutteth downe trees, the Copyholder ſhall not have a Writ of waſte, but ſhall ſue at the Lords Court to puniſh this waſte.

If a *feme* Dowable, by Cuſtome of a Copyhold; by plaint in the Lords Court, recovereth Dower and damages, no Action of debt lieth at the Common Law for theſe damages, becauſe the Action, though it be in it ſelfe perſonall, yet it dependeth upon the realitie.

If a Copyholder make a Leaſe by copy for yeares, or by Deede with Licenſe, an Action of debt lieth for the Rent, reſerved upon either Leaſe at the common law; but I much doubt whether he can avow for the Rent, either in the one, or in the other, no more than *Ceſtuy que uſe*, before the Statute 27. *H.* 8. *cap.* 10. could avow for the Rent reſerved by him upon a Leaſe for yeeres, and yet he could maintaine an Action of debt for

such a Rent, because an Action of debt is grounded upon the contract.

If a stranger cut downe trees growing in the Copyhold ground, an action of Trespasse lieth at the common law against him; so doth it against the Lord, where he cutteth them downe, when by Custome they belong to the Tenant, because this is a meere personall Action, and dammages onely are to bee recovered.

And if a Copyholder without licence, maketh a Lease for one yeere, or with Licence maketh a Lease for many yeers, and the Lessee be ejected, he shall not sue in the Lords court by Plaint, but shall have an *ejectione firme* at the common law, because he hath not a customary estate by Copy, but a warantable estate by the rules of the common law. Thus much of the manner how Copyholders are to impleade, and be impleaded.

SEC.

Sec. LII.

I Come now in the fixt place, to ſhew under what Statutes Copyholders are comprehended. Copyholders are comprehended under Statute, either by expreſſe limitation in preciſe words, or by a ſecret implication upon generall words. By expreſſe limitation in preciſe words;

As by the Statute of the firſt of *R.* 3. *cap.* 4. it is expreſſely provided, that a Copyholder having copyhold land, to the yeerly value of twenty ſixe ſhillings and ſixe pence; above all charges may be impanelled upon a Jury, as well as he that hath twenty ſhillings, *per annum* of Freehold-land.

So by the Statute of 1. *E.* 6. *cap.* 14. it is expreſly provided, that upon the diſſolution of Abbyes, and Monaſteries, Copyholds ſhould continue as they did before the Statute, and ſhould fall into the Kings hands.

So by the Statute of 2. *E.* 6. *cap.* 8. it is expreſly provided, that the intereſt

tereſt of a Copyhold, ſhould be preſerved, notwithſtanding it be not found by Office, after the deceaſe of the Kings Tenant.

So by the Statute of 1. *Mar. cap.* 12. it is expreſly provided, that if any Copyholder being Yeoman, Artificer, Husbandman, or Labourer, and being of the age of eighteene or more, under the age of ſixtie; not ſicke, impotent, lame, maymed, nor having any other juſt or reaſonable cauſe of excuſe upon requeſt made by any man in authoritie, refuſeth to aide Juſtices in ſuppreſſing of riotous perſons, that then immediately he ſhall forfeit his Copyhold to the Lord, of whom it is held during the Copyholders naturall life.

So by the Statute of 5. *Eliz. cap.* 14. it is expreſly provided, that the forgeing of a Court Roll, to the intent to defraud a Copyholder, ſhall be as well puniſhable, as the forgeing any other Charter, Deede, or writing ſealed, whereby to defeate a Copyholder or Freeholder.

So by the Statute of 13. *Eliz. cap.* 7. It is expreſly provided, that the Copyhold

pyhold land, as well as the Freehold land of a Bankerupt, ſhall be ſold for the ſatisfying of the Creditor.

So by the Statute of 14. *Eliz. cap.* 6. It is expreſly provided, that if any of the Queens ſubjects goeth beyond the Seas without licence, that then the Queene ſhall not onely take the ordinary profits of the fugitives Copyhold Land, as they ariſe, but ſhall let, ſet, and make Grants by Copy, and uſuall Wood-ſales, and other things, to all intents and purpoſes, as a Tenant pro terme *durante vie*, may doe.

So by the Statute of the 35. *Eliz. cap.* 2. It is expreſly provided, that if any perſon or perſons being convicted of recuſancie, repaire not home to their uſuall place of abode, not removing from thence above five miles diſtant, that then any perſon, or perſons thus offending, ſhall not onely forfeit their Freehold land to the Queene; but withall their Copyhold Land to the Lord, or Lords of whom it is holden.

Thus have I ſhewed in briefe under what Statute Copyholders are compre-

prehended by the expreſſe limitation in preciſe words. Now I will ſhew you as briefely as I can, under what Statute they are comprehended by ſecret implication upon generall words.

Sec. LIII.

SOme hold that all Statutes that ſpeake generally of Tenants, extend to Tenants by Copy: but it is much to be feared that we ſhall wander from the Truth, if we give credit to this conceit: for if we peruſe the Statute, we ſhall meete with an infinite number of them that ſpeake generally of Tenants, and yet touch not Tenants by Copy; wherefore not giving way to this opinion, as being erronious, I will ſet you down an infallible rule, which will truely direct you in the expoſition of the generall words in Statutes; and that is thus.

When an Act in Parliament altereth the ſervice, tenure, intereſt of the land, or other thing in prejudice of the Lord, or of the cuſtome of the Manor

Co. 3. fol. 8.

or, or prejudice of the Tenant, there the generall words of such an Act in Parliament extend not to the Copyhold; but when an Act is generally made for the good of the common wealth, and no prejudice may accrue, by reason of the alteration of any interest, service, tenure or custome of the Manor, there usually Copyholds are within the generall purview of such acts.

The Statute of *West.* 2. *ca.* 1. of intailes, extendeth not to Copyholds, because it would be prejudiciall to the Lord; for by this meanes the Tenure is altered: for the Donee intaile, without any speciall reservation ought to hold of the Doner by the same Service that the Doner holdeth over; besides the words of the Statute are, *Quod voluntas Donator. in charta Domini sui manifesta expressa & cetera observit*, which proveth, that the intent of the Statute was, that no hereditament should be intailed within this Statute, but such an one as either was given, or at least may be given by Charter, or Deed; but Copyholds are no such hereditaments, and

and therefore not within the body of the act; yet it is holden, that Custom with the cooperation of the Statute will make an estate tayle.

The Stat. of *W.*2.*c.*20. which giveth the *Elegit*, extendeth not to Copyhold, because it would be prejudiciall to the Lord, and a breach of the custome that any stranger should have interest in the lands holden by Copy without the admittance, and ordinary allowance of the Lord.

The Statute of 16.*R.*2. *ca.*5. which maketh it a forfeiture of lands, Tenements, and Hereditaments, to the purchasor of Excommunications, Buls, &c. in the Court of *Rome*, against the King, &c. extendeth not to Copyhold, because it would be prejudiciall to the Lord to have the King so farre interessed in his Copyhold without his consent.

The Statute of 2.*H.*5.*ca.*7. of Heretiques extends not to Copyholds; for though the Lord of a Manor is yeerly to receive a benefit in having the lands after the yeere and the day forfeited unto him; yet because the King is a sharer in this forfeiture;

there-

therefore lands by Copy are not comprehended under the generall words; beſides the Statute ſpeaketh of the Kings having *annuum diem, & vaſtum* of theſe lands forfeited for hereſie, as in lands forfeited for felony; whereby it appeareth, that the meaning of the Statute is, that ſuch Lands onely ſhould be forfeited, in which the King by the ordinary courſe of the law ſhould have *Annuum diem & vaſtum*, if the Tenant of them had committed felony: but ſuch lands are not lands by Copy; for if a Copyholder committed felony, his Copyhold is preſently forfeited to the Lord; therefore copyholds are out of the generall purview of this Statute.

SEC. LIV.

THE Statute of 27. *H.* 8. *ca.* 10. of uſes, toucheth not Copyholds, becauſe the tranſmutation of poſſeſſion, by the ſole operation of the Statute without allowance of the Lord, or the Agreement of the Tenant, would tend to the prejudice, both of the Lord, and of the Tenant, and the

the branch of the ſame Statute which ſpeaketh of Joyntures toucheth not Copyholds, becauſe Dowers of Copyholds are warranted by ſpeciall cuſtome onely, and not by the common law, or by the generall cuſtome.

The Statute of 31. of *H.* 8. *cap.* 1. & 32. *H.* 8. 32. by which joynt Tenements and Tenants in common are compellable to make partition by a Writ *de partitione faciend.* As copartners at the common law, touch not Copyholds, becauſe this alteration of the Tenure without the Lords conſent may ſound to the prejudice of the Lord.

The Statute of 32. *H* 8. *c.* 28. which confirmeth leaſes for 21. yeares, or three lives made by Tenants in tayle, or by the husband and wife, of the lands of the wife, touch not copyhold: for the Statute ſpeaketh of leaſes made by Deed only; ſo that the intent of the Statute is to warrant the leaſing of ſuch lands only as are Grantable by Deed, but ſuch are not copyhold lands: for though they may by licence of the Lord be demiſed by

Inden-

Indenture, yet in their owne name they are demiſeable onely by copy; and therefore out of the generall purview of the Statute: for the ſame reaſon, the ſame Statute *cap.* 34. which giveth an entry to the Grantee, of a Reverſion, upon the breach of a condition by the particular Tenant, toucheth not copyholds.

SEC. LV.

THe Statute of 17. *E.* 2. *cap.* 10. which giveth the Wardſhips of Idiots land unto the King, toucheth not the Ideots copyhold; for thereby great prejudice would accrue to the Lord.

But the Statute of *Marton*, *cap.* 1. which giveth dammages to a *feme*, upon a Recovery in a Writ of Dower; where the Baron dieth ſeiſed, extendeth to copyhold.

So that the Statute of *Weſtm.* 2. *cap.* 3. and the three ſeverall branches of the ſame Statute. *Co.* 4. *fo.* 30 *b.*

1. The one of which giveth the *Cui*

in vita, upon a diſcontinuance made by the Baron.

2 The ſecond which giveth the receit unto the *feme* upon the Barons refuſall to defend the wives title.

3 And the third, which giveth a *quod ei deforceat* to particular tenants extends to copyhold.

So that the Statute of 31. *H.* 8. *ca.* 13. of *Monaſter.* which provideth for the avoidance of doubling of eſtates.

Co. 4 fo. 26. And the Statute 32. *H.* 8. *cap.* 9. againſt *Champertie*, and buying of Litigious Titles, and *chap.* 28. which giveth an entry in liew of a *Cui in vita*, extendeth all to copyholds, becauſe theſe Statutes are beneficiall to the common wealth, and not at all prejudiciall to the Lord in the alteration of Tenure eſtate, Service, &c.

So the Statute of 4. *H.* 7. *cap.* 24. of Fines, extendeth to copyholds: for if a copyholder be Diſſeiſed, and the Deſſeiſor levieth a Fine with proclamations, and five years paſſeth without any claime made; this is a barre both to the Lord, and to the copyholder.

So

So if a copyholder make a Feoffment in Fee, and the Feoffee levieth a fine with proclamation, and five years passe, the Lord is barred; but if a Copyholder levie a fine, and five yeares passe, the Lord is not barred, for the Fine levied, the Copyhold having no Frank Tenant, is utterly void. And whereas it hath been doubted, that this Statute should not extend to copyhold, but the Lord should hereby receive grand prejudice; for he should not only lose the Fines, upon alienation or discents, and the benefit of forfeiture, but should withall be in hazard to be barred of his Frank tenant and inheritance. Co 9. fol. 105. a.

To that I answer, if the Lord receive any such prejudice, it is through his owne default, for not making claime, for in regard of the privity in estate, that is between him and the Copyholder he may make claime, as well as the Copyholder himselfe; *Et vigilantibus non dormientibus jura subveniunt.*

Thus have I shewed under what Statutes Copyholds are comprehended. I come now in the seventh place, to speak of fines.

Sec. LVI.

A Fine is a ſumme of money paid to the Lord of the Manor for an Income into any lands or Tenements. In ſome Manors Fines are certaine, in ſome incertaine.

Fines of Copy holds.

By ſpeciall cuſtome Copyholders are to pay Fines upon licences granted unto them to demiſe by Indenture, but by generall cuſtome they are to pay Fines onely upon admittances.

If the Lord having a Copyhold by Eſcheate forfeiture, or other means, maketh a voluntary admittance, a fine is due unto the Lord.

If a Copyholder ſurrendreth to the uſe of a ſtranger, and the Lord admitteth, a fine is due to the Lord.

So if a Copyhold deſcendeth, and the Lord admitteth the heire, where by the cuſtome of the Manor, the wife is to have Dower, and the Husband is to be Tenant by the curteſie of a Copyhold, either of them ſhall be admitted, and ſhall pay a Fine to the Lord.

If

If a Copyhold be granted *durante vita*, and the Grantee dieth, living, *Ceſtuy que vie*, and a ſtranger entreth as a generall occupant, he ſhall be admitted, and ſhall pay a Fine.

And ſo if a Copyhold be granted to one and his heires, *durante vita*; and the Grantee dieth, and his heire entreth as a ſpeciall occupant, where by the cuſtome of the Manor, a Copyhold may be extended, upon the extent, the party ſhall be admitted, and ſhall pay a Fine.

Where by the Cuſtome of the Manor, the Bailiffe of the Manor is to have the Wardſhip of the Copyhold heire; being under the age of fourteene, ſuch a Guardian ſhall neither be admitted, nor pay a Fine, becauſe he is but a partner of the profits, and that not in his owne right, but in the right of him to whom he is Guardian.

If the copyhold Lands of a Bankerupt be ſold according to the Statute of the 13. *Eliz. cap.* 7. the Vendee ſhall be admitted and pay a Fine.

If a Villaine purchaſeth a copyhold, the Lord of the Villaine may enter,

and seize it, and the Lord of the Manor shall admit him, and have a Fine.

If a copyhold be granted upon condition, and the condition be broken, and the Grantee entreth, hee shall not be admitted, neither pay a Fine, because upon the breach of the condition, and the entry, he is to all intents, *in Statu quo prius*, as if no grant at all had been made.

If a copyholder in Fee surrendreth for life, reserving the Reversion, and the Lessee for life dieth, the copyholder shall not be admitted to his Reversion, neither shall he pay a Fine because the Reversion was never out of him.

If a copyholder be disseised, and then entereth upon the Disseisor, or recovereth by plaint, in the nature of an Assize, hee shall not be admitted, neither shall he pay a Fine, for he continueth still Tenant by copy, notwithstanding the disseisin, but where by a Plaint a Copyhold is recovered upon the accrewer of a new Tytle, where he that recovereth was never admitted nor paid Fine, thereupon his recovery,

covery, an admittance is requisite, and a Fine is due: as if a Copyholder dieth seised, a stranger abateth, and the heire recovereth by Plaint in the nature of an Assize of *Mort d' auncester*; upon this recovery hee shall be admitted, and pay a Fine.

If I take a Wife, with Copyhold in Fee, though by this inter-marriage there accrueth a present interest to me; yet because I am seised, *non jure proprio*, but *jure alieno*, therefore I shall not be admitted, neither shall I pay a Fine.

The same law is, if she be a Termor of a Copyhold; for though the terme by the inter-marriage be so vested in me, that I may dispose of it without controule; yet because before disposer I am possessed of it, but in the right of my Wife; therefore I shall neither be admitted, nor pay a Fine. *Vide Plowd. com.* 418.*b.*

If a Copyhold be surrendred for life, the remainder to a stranger, though the admittance of Tenant for life be sufficient to invest the estate in him in the Remainder, yet upon the death of Tenant for life, he in the re-

mainder ſhall be admitted, and pay a Fine.

So if a Copyhold be granted to three, *habend. ſucceſſive*, whereby Cuſtome ſucceſſive is in force; if any one dieth, he that next ſucceedeth ſhall be admitted and pay a Fine.

If two Copartners, or Tenants in common of a Copyhold be, and the one dieth, and the other hath all by diſcent, he ſhall be admitted, ſhall pay a Fine. But if two joynt Tenants be of a Copyhold, one dieth, the other ſhall have all by the ſurvivorſhip without admittance, or paying Fine, becauſe joynt Tenants to all intents and purpoſes, are ſeiſed *per my, & per tout.*

If two ſeverall Copyholders joyne in a Grant of their copyhold by one copy; or if one Copyholder having ſeverall copyholds, granteth them by one Copy; yet the Grantee ſhall pay ſeverall Fines, for they ſhall inure as ſeverall Grants.

But if two joynt-Tenants, two Tenants in Common, or Tenant for life, and he in the Remainder joyne in

in the Grant of a Copyhold, one Fine onely is due, and it ſhall inure, as one Grant onely: ſo if a Surrender be made, and after a common Recovery is had by Plaint in the nature of a Writ of entry, in *Le poſt*, for the better aſſurance, one Fine onely ſhall be paid.

And thus much of Fines. I come now in the next place to Forfeitures; wherein I will chiefly rely upon theſe foure points.

1 What Acts amount to a Forfeiture.
2 What perſons are able to forfeit.
3 What perſons are able to take benefit of a Forfeiture.
4 What Acts amount to a confirmation of an eſtate forfeit.

SEC. LVII.

OF Acts which amount to Forfeiture, ſome are Forfeits, *eo inſtante*, that they are committed: ſome

ſome are not Forfeits till preſentment. Offences which are apparant and notorious, by which the Lord by common preſumption, cannot chuſe but have notice, are Forfeitures, *eo inſtante*, that they are committed: As if by ſpeciall Cuſtome, upon the diſcent of any Copyhold of Inheritance, the heire is tyed upon three ſolemne Proclamations made at three ſeverall Courts, to come in and be admitted to his Copyhold, if hee faileth to come; in this failer is a forfeiture, *Ipſo facto*.

So if a Copyholder be ſufficiently warned to appeare, and hee faileth, this is a forfeiture, *Ipſo facto*.

But if he be hindred by ſickneſſe, or by overflowing of waters, or if he be much in debt, and feare to be arreſted, or if he be a Bankerupt, and keepeth his houſe, then his default is no forfeiture.

If a Copyholder in the Court be called, and ſummoned to be ſworne of the homage, and refuſeth; this is a forfeiture, *Ipſo facto*.

So if a Copyholder be ſworne of the homage, and then refuſeth to pre-

ſent the Articles according to his Oath; this is a forfeiture, *Ipſo facto.*

So if a Copyholder will ſweare in Court, that he is none of the Lords copyholder, this is a forfeiture, *Ipſo facto.*

But if a copyholder in preſence of the court ſpeaketh unreverent words of the Lord, as that the Lord exacteth and extorteth unreaſonable Fines, and undue-Services, this is fineable only, but no forfeiture; and if he ſaith in Court, that he will deviſe meanes no longer to be the Lords copyholder, this is neither cauſe of fine nor forfeiture; for peradventure the meanes that he intended was lawfull; *viz.* by paſſing away his copyhold, *Et ubi ſenſus verborum eſt multiplex, verba ſemper ſunt accipienda in meliori ſenſu.*

If the Steward ſheweth a court Roll to a Copyholder, to prove, that his land is holden by Copy, and that the Copyholder ſaith he is a Freeholder, and ſheweth a Deede, pretending thereby to procure his land to be Freehold, and teareth in peeces the court-

Court Roll, this is a forfeiture *Ipſo facto.*

Co. 4.27. b. So if the Lord, upon the admittance of a Copyholder, the Fine, by the cuſtome of the Manor being certaine, demandeth his Fine, and the Copyholder denieth to pay it upon demand, this is a forfeiture *Ipſo facto.*

So if a Copyholder will ſue a Replevin againſt the Lord, upon the Lords lawfull diſtreſſe for his Rent or Services, this is a forfeiture *Ipſo facto.*

But if the Copyholder be in doubt whether it be due or not, and therefore intreateth the Lord, that the homage may inquire the truth, this is no forfeiture.

If the Fine by the cuſtome of the Manor be incertaine, though a reaſonable Fine be aſſeſſed, yet becauſe no man can provide for an uncertainty, the Copyholder is not bound to pay it preſently upon demand, but ſhall have convenient time to diſcharge it: if the Lord limit no certaine day for payment thereof, and if within convenient time it be not diſ-

discharged, this is a forfeiture without presentment.

But if the Fine be unreasonable, though it be never paid, it is no forfeiture, and it shall be determined by the opinion of the Justices before whom the matter dependeth, either upon a demurre, or in Evidence to the Jury, upon the confession or proofe of the yeerly value of the land, whether the Fine be reasonable or not; for if the Lords might Assesse unreasonable Fines at their pleasures, then most estates by Copy, which are a great part of the kingdom, and which have continued time out of minde, might now at the will of the Lords be defeated, and destroyed, which would be very inconvenient.

If the Lord demanded his Rent, and the Copyholder denieth to pay it, this is a forfeiture *Ipso facto*.

So if the Copyholder saith, that he wanteth money to discharge the Rent, and therefore intreateth the Lord to forbeare, untill he be better provided, unlesse the Lord giveth his consent; this non-payment is a forfeiture, *Ipso facto*.

For

For a Copyholder knowing his day of payment, is to provide againſt the day; but if the Lord commeth upon the Copyholders ground, and demandeth his rent, and neither the Copyholder himſelfe, nor any other by his appointment, is there preſent to anſwer their demand, though this be a deniall, in law, of the rent, yet this is no forfeiture.

But if the Lord continueth in making demand upon the ground, and the Copyholder is ſtill abſent, this continuall deniall in law, amounteth to a deniall in fact, and maketh the Copyholders eſtate ſubject to a forfeiture without preſentment.

If a Copyholder for life ſuffereth a recovery by plaint in the Lords court, as Copyhold of the inheritance, this is a forfeiture *Ipſo facto*.

But if he ſurrender in Fee, this is no forfeiture, becauſe it did not paſſe by livery.

If a Copyholder committeth waſte voluntarily or permiſſively, this is a forfeiture *Ipſo facto*.

Voluntary, as if he plucketh down any ancient built houſe, or if he buildeth

deth any new houſe, and then pulleth it down againe; or if he ploweth medow, ſo that thereby the ground is made worſe; or loppeth the trees, or felleth the lopping; or if he cutteth down any fruit trees for fuell, having other wood ſufficient, this and the like voluntary waſte are forfeitures *Ipſo facto.*

Permiſſive, as if he ſuffereth his houſe to decay, or fall to ground for want of neceſſary reparations; or if he ſuffereth his medowes for want of mending his bankes to be ſurrounded, ſo that it becomes Ruſhy, or worth nothing; or his arrable ground, ſo to be ſurrounded, that it is become unprofitable. Theſe and the like permiſſive waſtes are forfeitures *Ipſo facto.*

And thus much of acts which are forfeitures, *eo inſtante*, that they are commited. A word of thoſe Acts which are ſaid not forfeitures till preſentment.

Sec. LVIII.

AND such are those offences, which by common presumption, the Lord cannot of himself have notice of without notice given, as if a Copyholder commiteth felony or treason.

So, if a Copyholder be Outlawed, or excommunicate that the Lord may have the profits of his Copyhold land, a prelentment is necessary.

So, if a Copyholder goeth about in any other court to intitle any other Lord unto his Copyhold, or if he alieneth by Deed; these and the like ought to be presented.

If a Copyholder maketh a bargain and sale of his Copyhold, and it is not inrolled according to the Statute; this is no forfeiture; no more than a Feoffment without livery, because nothing passeth.

So if a copyholder maketh a feoffment of all his lands in Dale, and maketh livery in his charter lands, no part of his copyhold land is thereby for-

forfeited; but if Livery be made in any part of the Copyhold lands, all his copyhold lands are forfeited.

If a Copyholder by Deede of bargaine and sale inrolled according to the Statute, doth bargaine and sell all his Lands in Dale, having both Copyhold and freehold; his copyhold is not thereby forfeited; for the Law will construe this to extend to his freehold onely, rather than by any over-large construction make a forfeiture in this kinde.

And if a copyholder by Deed inrolled, bargaineth or selleth all his copyhold Lands in Dale, or all his Lands in Dale generally, having no freehold Lands, this is a forfeiture.

Thus I have shewed you what Acts amount to a forfeiture. Now I will shew you what persons are able to forfeit.

Sec. LIX.

A Man of *non sanæ memoriæ*, an Idiot, or a Lunatique, though they be able to take a Copyhold, yet they are unable to forfeit a Copyhold, becauſe they want common reaſon, nay comon ſenſe.

So an Infant that is under the age of fourteene, is unable to forfeit his copyhold, becauſe he wanteth diſcretion, and till then he is to be in Ward to the next of his kindred, to whom the inheritance cannot diſcend, or to the Lord, or the Bayliffe of the Manor, as the Cuſtome ſhall warrant.

So a *feme* covert by any Act ſhe can doe of her ſelfe, cannot poſſibly forfeit her copyhold, becauſe ſhe is not *ſui juris, ſed ſub poteſtate viri*: but if ſhe doe any Act which amounteth to a forfeiture by the conſent of her huſband, this is in her a forfeiture.

An Infant at the age of diſcretion may forfeit his Copyhold, not by offences which proceede from negligence

gence or ignorance, but by such as proceed from contempt.

If an Infant come not in to be admitted, according to the Custome at three solemn proclamations made at three severall Courts; or if he will suffer his houses to goe to ruine, or his ground to be surrounded; these Acts savouring of negligence onely, are no forfeitures.

So if an Infant Copyholder sueth a Replevin against the Lord, upon a distresse lawfully taken; or if he alieneth by Deed, or the like; these Acts relishing of ignorance onely are no forfeitures.

But if he denieth from time to time to pay the Lord the Rent, or committed voluntary waste, notwithstanding often warning given him by the Lord; these acts proceeding from malice and contempt, are forfeitures; and so if he committeth felony or treason.

If a Guardian of a Copyholder committeth waste, he shall forfeit the Wardship onely, not the inheritance of the Copyhold.

If *Cestuy que use*, of a Copyhold

committeth waſte, he ſhall not forfeit the Copyhold.

If the husband committeth waſte in Copyhold lands, which he hath in the right of his wife; this is a forfeiture of the wives Copyhold.

But if a ſtranger committeth waſte without the conſent of the husband, this is no forfeiture though the wife conſenteth.

If a Diſſeiſor of a Copyhold committeth waſte; this is no forfeiture.

So, if a Copyhold be ſurrendred to the uſe of *I. S.* and before admittance, *I. S.* committeth waſte; this is no forfeiture, for by the ſame reaſon that hee cannot grant before admittance.

If two joynt Tenants be of a Copyhold, and one committeth waſte he forfeiteth his part onely, for no man can forfeit more than hee hath granted.

And therfore if there be tenant for life, with a remainder over, of a Copyhold, and the Copyholder for life purchaſeth the Manor, committeth waſte or doth any act, which amounteth to the extinguiſhment, or the forfeiture

of a Copyhold, yet the remainder is not hereby touched.

And ſo if a Copyhold be granted to three, *habend. ſucceſſive*, whereby the cuſtome of the Manor, this word *Succeſſive* taketh place, the firſt Copyholder cannot prejudice the other two by any act: he can doe no more, than if a Copyholder in Fee by licence, maketh leaſe for years by Deed, or without licence by Copy, and either of theſe leſſees commiteth waſte, the reverſion is not hereby forfeited.

If I have two ſeverall Copyholds, by two ſeverall Copies, and I commit waſte in one, this is a forfeiture of this one onely, and not of the other.

And ſo if I grant theſe ſeverall Copyholds by one Copy, yet they continue ſeverall as they did before, and the forfeiture of the one is not the forfeiture of the other.

The ſame law is, if two ſeverall Copyholds Eſcheate to the Lord, and he regranteth them againe by one Copy.

And thus have I ſhewed what perſons

sons are able to forfeit. I will now in a word shew what persons are to take benefit of a forfeiture.

Sec. LX.

REgularly it is true, that none can take benefit of a forfeiture, but he that is Lord of the Manor at the time of the forfeiture.

And therefore if a Copyholder maketh a Feoffment, and then the Lord alieneth, neither the Granter, nor the Grantee can take benefit of this forfeiture, for neither a right of entry, nor a right of action can ever be transferred from one to another. And therefore if a Freeholder alieneth in Mortmaine, and then the Lord granteth away his Seigniory, neither the one nor the other can ever take benefit of this forfeiture.

So if a lessee for life committeth waste, and then the lessor granteth away the reversion, this waste is made dispunishable.

But if Tenant for life be of a Manor,

nor, with remainder over in Fee to a ſtranger.

If a copyholder committeth waſte, and then Tenant for life of the Manor dieth before entry; yet he in Remainder may enter, for he had an intereſt in the Manor at the time of the forfeiture committed, though he could not enter, by reaſon of the State in Tenant for life, which being determined, his entry is now accrued unto him for the forfeiture committed in the life of Tenant for life.

And ſometimes, he that is neither Lord of the Manor, at the time of the forfeiture committed, nor ever after ſhall take benefit of a forfeiture.

As if a Lord of a Manor granteth a Copyhold in Fee, and then granteth the Frank Tenement, or the inheritance of this Copyhold to a ſtranger; the grantee, though no Lord of the Manor, nor able to keepe any Court, ſhall take benefit of forfeitures made by the Copyholder, as if the Copyholder doe make a Feoffment, leaſe, waſte, deny the Rent, &c. Co. 4. fo. 24.

Thus have I ſhewed what perſons are able to take benefit of a forfeiture. I will now in one word ſhew what acts amount to a confirmation of an eſtate forfeited.

Sec. LXI.

IF the Lord doth any thing whereby he doth acknowledge him his Tenant after forfeiture; this acknowledgement amounteth to a confirmation; as if he diſtreyneth upon the ground for Rent due after forfeiture; or if he admitteth after the forfeiture, or the like: theſe are eſtoppels to the Lord; ſo that he can never enter, ſo the Lord have notice of ſuch forfeitures before any ſuch act, which may amount to a confirmation be done: yet ſome make this difference, that theſe forfeitures onely which deſtroy not the Copyhold are onely conformable by ſubſequent acknowledgement, and not thoſe forfeitures which tend to the deſtructions of a Copyhold; As if the Copy-

holder

holder maketh a Feoffment; by this the Copyholder is deſtroyed, and therefore no ſubſequent acknowledgement of the Lord will ever ſalve this ſore.

And this ſhall ſuffice for forfeitures. I come now in the laſt place, to ſhew what acts amount to the extinguiſhment of a Copyhold.

Sec. LXII.

WHereſoever a Copyhold is become demiſable by Copy, either by the Act of the Lord, by the act of the law, or by the Act of the Copyholder himſelfe, it is extinguiſhed for ever.

By the Act of the Lord; As if a Copyholder Eſcheateth, and the Lord granteth away any eſtate by Deed, this is an extinguiſhment. So if hee maketh a Feoffment upon condition, and then 'entreth for breach of the condition: yet the Copyhold is extinguiſhed, becauſe once not demiſable.

But

But if the Lord keepeth the copyhold lands, for never so many yeares, or granteth at will, this destroyes not the copyhold, because it continueth ever demisable by copy.

By the Act of the law; As if the copyhold escheated be extended upon a Statute or Recognizance acknowledged by the Lord, or if the *feme* of the Lord hath this land assigned unto her for her Dower, although these impediments be by the act of the law: yet because they are lawfull, the land can never after be granted by Copy.

By the act of the copyholder himselfe; As if he accepteth a lease for yeares at the common law, either mediate or immediate from the Lord of the copyhold, this is an absolute extinguishment.

But if he accepteth a Lease for years of the Manor, the copyholder by this hath not continuance, but this is no extinguishment, because the land continueth still grantable by copy.

If a copyholder with licence make a lease for yeares to a stranger; or without licence, maketh a lease for yeares

yeares to the Lord, the copyhold is not hereby extinguished, and yet it is not demisable by copy.

So if a copyholder intermarrieth with a *feme Seignioresse*; this is a suspension only of the copyhold, no extinguishment.

So if the interruption be *torcious*, as the Lord be disseised, and this disseisor dieth seised, or if the land be recovered by false verdict, or erronious judgement; and after the land is recontinued, it is not extinguished, but may be granted arrere by copy; for *Non valet impedimentum quod de jure non sortitur effectum, & quod contra legem fit pro infecto habetur.*

And so I conclude with copyholders, wishing that there may ever be a perfect union betwixt them and their Lords, that they may have a feeling of each others wrongs and injuries; that their so little common wealth, having all his members knit together in compleate order, may flourish to the end.

FINIS.